

ADLER MEDICAL, LLC vs. HARRINGTON
1-22-cv-00072-KG-LF

Blaine Harrington, III
September 28, 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EXHIBIT "C"

ADLER MEDICAL, LLC; WALT ARNOLD
COMMERCIAL BROKERAGE, INC.; XUAN
NATION, LLC; AND NM CCIM CHAPTER
OF THE COMMERCIAL INVESTMENT REAL
ESTATE INSTITUTE,

Plaintiffs,

vs.

Case No. 1-22-cv-00072-KG-LF

BLAINE HARRINGTON, III,

Defendant/Counterclaim Plaintiff
Third-Party Plaintiff,

vs.

ADLER MEDICAL, LLC; WALT ARNOLD
COMMERCIAL BROKERAGE, INC.; XUAN
NATION, LLC; AND NM CCIM CHAPTER
OF THE COMMERCIAL INVESTMENT REAL
ESTATE INSTITUTE,

Counterclaim Defendants,

and

CCIM INSTITUTE,

Third-Party Defendant.

VIDEOTAPED DEPOSITION OF BLAINE HARRINGTON, III

September 28, 2022

9:00 a.m.

317 Commercial Street NE, Suite G-101
Albuquerque, New Mexico 87102

ADLER MEDICAL, LLC vs. HARRINGTON
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1 PURSUANT TO THE NEW MEXICO RULES OF CIVIL PROCEDURE,
2 this VIDEOTAPED DEPOSITION was:

3 TAKEN BY: JEFFREY LOUIS SQUIRES, ESQ.
4 ATTORNEY FOR PLAINTIFFS

5 REPORTED BY: VERONICA E. BYRD, CCR, RPR
6 NEW MEXICO CCR #36
7 WILLIAMS & ASSOCIATES, LLC
8 317 Commercial Street NE, Suite G-101
9 Albuquerque, New Mexico 87102
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A P P E A R A N C E S

For the Plaintiffs:

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Also Present: Jim Bess, Videographer

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1 THE VIDEOGRAPHER: It is Wednesday, the 28th of
2 September 2022. The time is approximately 9:00 a.m. We are
3 on the record.

4 My name is Jim Bess, Certified Video Specialist,
5 of Moir Litigation Video located in Albuquerque, New Mexico.

6 The court reporter is Veronica Byrd for Williams &
7 Associates.

8 We're here for the deposition of Blaine
9 Harrington, III, in the case of Adler Medical, LLC, et al.,
10 versus Blaine Harrington, III, filed in the United States
11 District Court for the District of New Mexico. This is Case
12 No. 1-22-CV-00072-KG-LF.

13 This deposition is being held at the offices of
14 Williams & Associates located at 317 Commercial Street
15 Northeast, Suite G-101, in Albuquerque, New Mexico.

16 Would counsel now please state their appearances
17 for the record.

18 MR. SQUIRES: I'm Jeffrey Squires, Counsel for the
19 Plaintiffs. With me is Ryan Vetter, who is an associate
20 counsel in this matter.

21 MR. DeSOUZA: This is Daniel DeSouza, Counsel for
22 Mr. Harrington. Also on Zoom are Lauren Hausman and James
23 D'Loughy, who are attorneys in my office.

24 THE VIDEOGRAPHER: Thank you.

25 ~~Would you please swear in the witness.~~

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BLAINE HARRINGTON, III

having been first duly sworn, testified as follows:

EXAMINATION

BY MR. SQUIRES:

Q. Mr. Harrington, you've heard the introductions, so you know who we are. A couple of introductory comments. Have you ever been deposed before?

A. Yes.

Q. How frequently?

A. I think probably -- maybe three times in the past.

Q. Okay. So you're generally familiar with the process?

A. Yes.

Q. Okay. I'll ask you questions. If your attorney has any objections to my questions, he will state them. Unless he instructs you not to answer, you are to answer the questions. So to save time, not every time he objects should that engender a discussion. It should just continue on without further explanation, unless he instructs you not to answer. Do you understand that?

A. Yes.

Q. Okay. Good. You feel fine this morning?

A. Yes.

Q. When did you fly into Albuquerque? I assume you flew into Albuquerque.

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1 A. No. I drove.

2 Q. And you drove from Denver?

3 A. Yes.

4 Q. The Denver area?

5 A. Right.

6 Q. And you live in the Denver area; is that right?

7 A. That's correct.

8 Q. Your home address is?

9 A. 7533 South Overlook Way, Littleton, Colorado
10 80128.

11 Q. And is that also the location of your, you know,
12 administrative offices for your photography practice?

13 A. Yes. I have a home office there.

14 Q. Okay.

15 MR. DeSOUZA: Jeff, very quick, before you ask
16 anything else, I -- I'm picking you up just fine.
17 Mr. Harrington's voice is very low. I don't know if there's
18 a speaker there, in between the two of you, but it's picking
19 you up much better than it's picking him up.

20 THE WITNESS: You want to adjust that up?

21 MR. SQUIRES: He is -- he is a little -- a little
22 more soft-spoken than I am. In general, from the
23 interchange so far, that might explain why that's the case.

24 THE WITNESS: Is there anything you can do to
25 adjust it, or no?

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1 THE VIDEOGRAPHER: Just pull it closer to you.

2 THE WITNESS: Oh, this one?

3 THE VIDEOGRAPHER: Yeah.

4 THE WITNESS: All right.

5 Is that better?

6 MR. DeSOUZA: I can hear you. It's still --
7 you're -- you're still not as loud as Mr. Squires, but
8 I'll -- I'll carry on.

9 THE WITNESS: Okay.

10 MR. DeSOUZA: Appreciate it, guys.

11 Q. (BY MR. SQUIRES) Circumstances here are a little
12 unusual and a little bit of a surprise. I had not been
13 advised in advance that Mr. DeSouza would be participating
14 by Zoom. There are documents that I will show you during
15 the course of this deposition and question you about, and I
16 cannot show them to Mr. DeSouza in a way that facilitates
17 his having access simultaneously to those documents. We'll
18 provide Mr. DeSouza a full set of copies of the documents
19 that I question you about after the deposition takes place.

20 A. Okay.

21 Q. First, I think I'll show you a copy of the Notice
22 of Deposition.

23 MR. SQUIRES: And I would ask that this be marked
24 as Deposition Exhibit 1.

25 (Exhibit 1 marked.)

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1 Q. (BY MR. SQUIRES) And I mentioned to the court
2 reporter there will be lots of exhibits in this deposition.
3 Are you -- have you seen this before?

4 A. Yes, I have.

5 Q. It was provided to you by your attorney?

6 A. Correct.

7 Q. And you discussed this notice with your attorney.
8 Now, I'm going to ask you a number of questions throughout
9 the course of the deposition about your engagement with your
10 attorney. I do not expect you to tell me anything about
11 legal advice you sought or received from your attorney, but
12 there will be questions about whether or not you discussed a
13 certain subject with your attorney and there will be
14 questions about possibly the subject of advice, other than
15 legal advice, that you may have sought or received from your
16 attorney. Those kinds of subjects are fair game.

17 A. Yeah.

18 Q. Okay. You understand all this?

19 A. Yes.

20 Q. Good. Okay.

21 A. After -- after we're done with it, do I hand it
22 off, or what do I --

23 Q. No. You can keep it. The court reporter has a
24 copy.

25 A. Okay. All right.

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1 Q. And at the conclusion of the deposition, she will
2 provide a final set of copies, bound, to each of the
3 lawyers, along with the transcript of the deposition, for
4 their use.

5 A. Okay.

6 Q. So let me ask you a few questions about your
7 dealings with your attorney. How long have you been
8 represented by CopyCat Legal?

9 A. We started working together in December of 2021.

10 Q. Okay. CopyCat Legal has brought a number of
11 Complaints on your behalf in various federal courts in the
12 United States; is that right?

13 A. Yes.

14 Q. Have they brought any actions in any state courts
15 on your behalf?

16 A. I don't believe so.

17 Q. Do you know the difference between state courts
18 and federal courts?

19 A. I do.

20 Q. Okay. And they have written letters on your
21 behalf to parties that are alleged to have infringed
22 copyrights in your photographs? That's also correct, yes?

23 A. Correct.

24 Q. Do you review, in advance, every letter that goes
25 out from your attorney to an alleged infringer?

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1 A. No.

2 Q. Okay. Do you review, in advance, every Complaint
3 filed by your attorneys on your behalf?

4 A. Yes.

5 Q. And have you approved of every Complaint that was
6 filed in your name by your attorneys?

7 A. Yes.

8 Q. Do you have any records showing that you reviewed
9 those Complaints, records which might consist of email
10 correspondence, back-and-forth, saying that you have
11 reviewed the Complaints and approve of them?

12 A. Yeah. I assume so, yes.

13 Q. You say you assume so. Do you know so?

14 A. Well, if you're talking that -- that they have
15 provided me with them to review, and I say that it's okay,
16 then I would have an email to that effect.

17 Q. Yes. Okay. So you do have emails to that effect?

18 A. I believe so, yes.

19 Q. How many Complaints, approximately, have they
20 filed on your behalf since you first engaged them in
21 December of 2021?

22 A. I don't know exactly.

23 Q. I didn't ask you exactly. I said,
24 "approximately."

25 A. I -- I don't know.

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1 Q. You have no idea?

2 A. No. I mean, I can't -- I can't tell you with
3 specificity.

4 Q. I haven't asked for specificity.

5 A. Well, I -- I -- I can't -- I can't be more clear
6 than that. I know they've filed a number, but the number --
7 the exact number, I don't know.

8 Q. Do you think it's more than ten?

9 A. Yes.

10 Q. Do you think it's more than 20?

11 A. Perhaps.

12 Q. Okay. Do they ask you whether you want to file
13 suit or not in each case in which they have filed suit?

14 A. No.

15 Q. You are primarily, I understand, a travel
16 photographer; is that correct?

17 A. That's correct.

18 Q. Do you travel a lot?

19 A. Most years. The last two years, because of COVID,
20 not. I -- I've -- I've started to travel again since
21 spring, this year, but yeah, there were several years
22 where -- where I didn't travel at all.

23 Q. Do you have travel --

24 THE VIDEOGRAPHER: Excuse me.

25 Q. (BY MR. SQUIRES) Do you have travel plans

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1 scheduled over the next foreseeable future?

2 A. Yes.

3 Q. Could you briefly describe what your travel plans
4 are?

5 A. Next Tuesday, I'm flying to New Zealand, and I
6 have other plans beyond that.

7 Q. Do you plan to be away from your home for an
8 extended period of time?

9 A. Yes.

10 Q. For how long?

11 A. Probably a year and a half.

12 Q. And do you have a schedule of commitments during
13 that period of time?

14 A. It's not scheduled, but I have a plan.

15 Q. Okay. Does your plan take into consideration the
16 trial of any lawsuits?

17 A. No.

18 Q. Okay. Do you have any plans for any period of
19 time to return home during that year and a half?

20 A. No, I don't.

21 Q. So you expect to be away from home continuously
22 for a year and a half?

23 A. Correct.

24 Q. Okay. How about beyond the year and a half? Do
25 you have any plans that would commit you to --

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1 A. No, I don't.

2 Q. -- return to home?

3 A. Well, I -- I do plan to return to home, yes.

4 Q. Do you have a family that lives with you in
5 Littleton?

6 A. Yes.

7 Q. Who are your family members?

8 A. My wife is Maureen. My daughter -- adult
9 daughter, Lauren, who is 27, also lives there. I have a son
10 who is 30, who lives in California.

11 Q. Do any of your family members plan to travel with
12 you?

13 A. Not that I know of, because they have lives of
14 their own, unfortunately.

15 Q. Okay. You take photographs sometimes on a
16 commissioned basis? When I say that, I mean, you are
17 commissioned or hired --

18 A. Yes.

19 Q. -- to take photographs?

20 A. Yes.

21 Q. And you have to put a price on your services, I
22 assume --

23 A. Yes.

24 Q. -- when you do that? What factors do you take
25 into consideration when you set prices for your photographic

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1 services?

2 A. That totally depends on the usage, whether it's
3 editorial, meaning a magazine or a newspaper, or corporate
4 or advertising. There's entire -- different sets of --
5 of -- of pricing possibilities, and other factors include
6 specifically how it would be used, if it's going to be used
7 for one thing or multiple things. For example, for
8 editorial, for a magazine, if it's used inside the magazine,
9 if it's for a cover. The gen- -- the general -- the general
10 factors are how it's used, what size it's used, for how long
11 it's used. In general, my photography is rights-managed,
12 meaning there's a specific thing that it can be used for as
13 opposed to just used in general for anything, which a lot of
14 photography is today.

15 Q. Okay. Do you take into consideration the
16 financial wherewithal of the client?

17 A. To a certain degree. You know, a -- a Fortune 500
18 company would be different than a local business. I mean,
19 that's -- that's a factor.

20 Q. Okay. Have you ever been commissioned to provide
21 a photograph for the cover of a national consumer magazine?

22 A. Yes.

23 Q. An examp- -- can you tell me what magazines those
24 were?

25 A. Well, many, and over many years. I've been a

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1 photographer for 45 years, but I mean -- as an example, I've
2 had covers on Smithsonian magazine. I have covers on
3 various AAA publications. There's one that I have stories
4 in their last two issues, that are three times a year now --
5 a lot of publications don't publish every month now --
6 called "AAA Traveler Worldwide." It's for the mid-Atlantic,
7 and I -- I've done several stories for them recently.

8 Q. And when -- when you shoot covers for magazines,
9 the prices are higher than when you shoot an image for a
10 local business to use on its website?

11 A. Well, not necessarily, because a website, if it's
12 a commercial usage, might be more than an editorial usage,
13 if -- if you understand me.

14 Q. I don't understand what you mean by "editorial
15 usage."

16 A. "Editorial," again, is like a magazine.

17 Q. A magazine cover?

18 A. Well, a magazine cover traditionally has been
19 valuable, but more -- as I said, I've been a photographer 45
20 years, and so until 2005, roughly, it was all shot with
21 film, and so the -- and the digital age and the -- the --
22 the internet age has changed everything markedly, so there
23 are fewer things -- you know, up until that point, most
24 everything was done in print, and pricing was based upon
25 print. Now, most everything is -- is online, and so that

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1 has substituted it, and -- and so -- yeah. There are
2 different factors.

3 Q. Has that influenced -- that changeover, from film
4 to digital, influenced the pricing of your work?

5 A. Not so much. I mean, it's more what the -- what
6 the market does, but in terms of mine, I've tried to be
7 fairly consistent, because I have a -- a good track record
8 of publication and so on.

9 Q. Okay. Do you consult with others about the
10 pricing you charge?

11 A. Well, in the past, there were pricing guides and
12 so on that were printed by -- someone like Jim Pickerell is
13 well-known in the -- in the photo- -- photographic
14 community. Also, stock agencies used to be more
15 transparent, I guess I would say, in terms of providing
16 prices -- like pricing guides, pricing calculators.
17 That's -- that's not so common anymore.

18 Q. How long ago did it start to become less common
19 for the stock agencies to --

20 A. Oh, it's been the last five years, I'd say.

21 Q. Okay. You still are represented by one or more
22 stock agencies?

23 A. No.

24 Q. You have no connection now with any of the stock
25 agencies that you have had relationships with in the past?

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1 A. Correct.

2 Q. When did that occur?

3 A. Over the last two years.

4 Q. Was that the result of COVID or other factors?

5 A. Mostly that I didn't think they had photographers'
6 best interests at heart, as they did in the past. They're,
7 you know, corporate entity -- entities, so --

8 Q. The stock -- or excuse me, the pricing guide that
9 you referred to -- guides, perhaps plural -- and you
10 mentioned the name Jim Pickerell --

11 A. Correct.

12 Q. -- do you use them?

13 A. No. I'm not -- he -- I'm not even sure he still
14 publishes them. I'm just saying that those were things that
15 I used in the past, over 20 or 30 years. I don't think I've
16 really used them in the last ten years or so.

17 Q. Do you consult with your lawyers about the
18 prices -- the amounts you demand when you allege that
19 someone has infringed your copyrights?

20 A. No.

21 Q. So you instruct them as to what amounts to --

22 A. No; no.

23 MR. DeSOUZA: Object -- objection.

24 A. No.

25 ~~MR. DeSOUZA: Attorney-client privilege.~~

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1 Don't answer that, Blaine.

2 And -- and anything about his instructions to his
3 lawyers, we're not getting into today, Jeff.

4 MR. SQUIRES: I'm going to take issue with that.
5 I'm not going to argue it at great length now, unless
6 Mr. DeSouza wants to, but discussions about the amounts to
7 charge are a question of business, not law, unless -- and
8 I'm not talking about statements of statutory damages and
9 ranges of statutory damages. I'm talking about the amounts
10 that Mr. Harrington or his lawyers, on his behalf, demand
11 of -- to avoid litigation over the copyright issue. That's
12 business advice, and I -- Dan, are you hearing me?

13 MR. DeSOUZA: I hear you just fine --

14 MR. SQUIRES: Okay.

15 MR. DeSOUZA: -- but --

16 MR. SQUIRES: The reason I ask -- the reason I ask
17 is there's something on the screen that is blocking your --
18 your face, not because I am concerned that this -- this
19 should lead to an argument. I just wanted to make sure you
20 were hearing me and that the blockage on the screen isn't
21 preventing that.

22 MR. DeSOUZA: No. I -- I hear you.

23 THE WITNESS: You want to do it?

24 MR. DeSOUZA: I can see you. I can see

25 ~~Mr. Harrington. Your associate appears to be just a tie,~~

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1 but I can't see his face. I -- I hear -- I hear and see
2 everything that's going on.

3 MR. SQUIRES: Okay. That's fine.

4 So I'm going to take issue with that. I'm going
5 to reserve that. I -- I may contest that at some future
6 time, because I think that is an improper assertion of the
7 privilege. We'll see.

8 THE WITNESS: I'd like to get rid of this thing so
9 I can see him. He's trying.

10 THE VIDEOGRAPHER: We need to go off the record --
11 (Court reporter response.)

12 THE VIDEOGRAPHER: We're now going off the record.
13 The time is approximately 9:24 a.m.

14 (A discussion was held off the record.)

15 THE VIDEOGRAPHER: We're now going back on the
16 record. The time is approximately 9:25 a.m.

17 Q. (BY MR. SQUIRES) Over the years, you've spent
18 some time in New Mexico; is that correct?

19 A. Little.

20 Q. A number -- you filed, in the past, a number of
21 lawsuits in New Mexico --

22 A. Correct.

23 Q. -- based upon photographs taken in New Mexico?

24 A. Yes.

25 Q. So you have taken photographs in New Mexico, but

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1 how often have you been in New Mexico for the purpose of
2 taking photographs?

3 A. I've been several times. But the majority of them
4 were all shot during the Balloon Fiesta, and I was a guest
5 of Visit Albuquerque for that.

6 Q. But you were here?

7 A. Yeah, I was here.

8 Q. And you were taking photographs --

9 A. Correct.

10 Q. -- for your own purposes?

11 A. Yes, and for Visit Albuquerque, who -- who
12 licensed quite a few of the photos.

13 Q. So explain to me what your relationship with Visit
14 Albuquerque was.

15 A. As an example, I'm a member of an organization
16 called "Society of American Travel Writers," which includes
17 photographers, video people, public relations people,
18 et cetera, and so there are a number of public relations
19 people who either work for public -- public relations firms
20 or -- you listening? --

21 Q. Yes.

22 A. -- or for a specific company like Carnival Cruise
23 Lines [sic] or for the Netherlands Tourist Board or
24 something like that. So Visit Albuquerque was -- or it
25 ~~probably still is -- a member of that organization, and~~

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1 through that -- they use that to vet travel journalists who
2 they would like to invite to help them cover their area.

3 Q. How often did you visit New Mexico at the behest
4 of Visit Albuquerque?

5 A. Once.

6 Q. Have you visited New Mexico for the purpose of
7 taking photographs on other occasions?

8 A. Yes.

9 Q. Were you doing so at the behest of anyone in
10 particular?

11 A. I don't believe so.

12 Q. Okay. How often?

13 A. I -- you want me to guess?

14 Q. Sure.

15 A. Maybe five times.

16 Q. Okay. Over the past how many years?

17 A. Over the past 20 years.

18 Q. Okay. And have you used those photographs for
19 your business?

20 A. Yes.

21 Q. How do you use them?

22 A. Well, primarily, they were made available to -- to
23 either my regular clients or potential clients through my
24 website and through the stock agencies that licensed my
25 work.

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1 Q. Okay. When you were here at the behest of -- when
2 were you here at the behest of Visit Albuquerque?

3 A. I think it was -- hang on. Just a sec. I think
4 it was 2011.

5 Q. Okay. And did you have any written agreement with
6 Visit Albuquerque about your being here and the photographs
7 you took?

8 A. No. As I said, I was their guest. They got me up
9 in a number of balloons, for example. They arranged for me
10 to get on top of the TV station to shoot the skyline, you
11 know, some things that were not -- that were out of the
12 ordinary and made the photos more valuable, because not
13 everybody could shoot them, but there -- no. There was no
14 written agreement. It was more of a, "We will support you,"
15 and then -- and then I gave them the ability to -- to see
16 the take afterward. And they chose what they wanted to use,
17 and then they licensed them.

18 Q. So you have licenses that you entered with Visit
19 Albuquerque?

20 A. Correct.

21 Q. Okay. I'd like to see those licenses. I'll --
22 I'm making notes of these things, and I will follow this up
23 with a written request for a number of items that will be --
24 those will be one of them, along with any correspondence
25 between you and the representatives of Visit Albuquerque

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1 about the visit and your role taking photographs. Did they
2 provide you any financial support in connection with your
3 taking the photographs?

4 A. Well, as I said, like they do for all the travel
5 journalists, they pay your expenses, so in other words, a
6 hotel is provided, et cetera.

7 Q. And they provided you the facilities for you to
8 take a balloon ride for the purpose of your taking
9 photographs?

10 A. Right.

11 Q. Okay. Tell me briefly about your formal training
12 as a photographer, and when I say "formal training," I mean
13 advanced level education.

14 A. I have been a published photographer since I was
15 17 years old. I started out when I -- I raced motocross as
16 a teenager and kind of crossed over from racing to writing
17 and photographing for a motorcycle newspaper -- a racing
18 newspaper in Southern California. This is when I was still
19 in high school. I interned with them during the summer in
20 their office in Orange County, California. One -- a
21 nighttime desert race with the two -- the publisher and the
22 editor, in the Mojave Desert, photographed Steve McQueen
23 when they -- he was making a movie called "On Any Sunday"
24 about motorcycle racing, that was picked up by other
25 publications. And after -- so that was -- that was the

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1 beginning of my career. Now, as far as formal, I -- after
2 that, I -- after I graduated -- graduated high school in
3 Colorado, I attended Brooks Institute of Photography in
4 Santa Barbara, California, and graduated number one in my
5 class in advertising illustration.

6 Q. How long was that curriculum?

7 A. I think it was around three years.

8 Q. Okay. Any postgraduate work?

9 A. No. I mean, most people who are photographers
10 don't even go to photography school. They either are self
11 taught or they intern. After I -- after I graduated from
12 that school, I went to work in an advertising studio in
13 Amsterdam in the Netherlands, and from there, I moved to
14 New York -- decided it was -- had more to offer me -- and
15 started out as an assistant because I didn't know the city
16 and didn't have the connections to work as a photographer
17 immediately, and I worked both as a staff assistant and a
18 freelance assistant to about 20 different well-known
19 photographers in advertising and fashion. So many people I
20 met there, that -- that's how they learned the craft,
21 through interning, but I did it both through formal
22 education and through interning -- not interning, but
23 assisting.

24 Q. With whom -- I'm focusing on your business now, on
25 ~~photography as a business. With whom are you in~~

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1 competition?

2 A. Primarily other travel photographers.

3 Q. How about stock agencies?

4 A. Well, stock agencies represent photographers.

5 Q. Sometimes, and sometimes they have portfolios of
6 photographs that are not the subject of ownership rights.

7 A. True. But I don't have anything to do with that,
8 and I have little knowledge of it.

9 Q. Okay. How about Google Images?

10 A. What -- what's the question?

11 Q. Is Google Images a competitor of yours?

12 A. I'm not even aware that Google sells photos. I
13 know --

14 Q. No?

15 A. I know -- I know Adobe does. I'm not -- I don't
16 know anything about Google Images.

17 Q. You are aware that Google Images has galleries of
18 photographs available on the internet, right?

19 A. No, I'm not aware.

20 Q. You're not aware of that? Accept the
21 assumption -- not the assumption -- accept, for these
22 purposes, which does not mean you are accepting the truth of
23 what I'm about to say, but as a predicate, that there is a
24 website generally known as "Google Images" which allows
25 access to lots of photographs.

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1 A. Okay. No. I was -- I was unaware. The only time
2 I've used Google Images is to do reverse searches, which is
3 perhaps something separate.

4 Q. It -- I'm -- I'm -- we'll get there, but not right
5 now. But would that be considered a -- a competition with
6 your business?

7 A. Well, I'd say, at this --

8 MR. DeSOUZA: Object -- object to form.

9 Q. (BY MR. SQUIRES) You -- you can answer.

10 THE WITNESS: Do I answer?

11 MR. DeSOUZA: Yeah. Sorry, Blaine. In fact, if I
12 don't instruct you --

13 Q. (BY MR. SQUIRES) Do you remember the original
14 instruction? Unless he instructs you not to answer --

15 A. Okay.

16 Q. -- the fact that he objects --

17 A. Fine.

18 Q. -- shouldn't -- shouldn't --

19 A. So would you please repeat that, your question?

20 Q. Do you -- accepting my predicate statements --

21 A. Are they -- are they competition?

22 Q. Yeah.

23 A. Well, you know -- I mean, here's -- here's the way
24 I look at it. I was a fairly big player. I mean, I had a
25 hundred thousand images online before leaving these

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1 agencies. I have a library of at least half a million
2 photos. I have a reputation. I had clients. I've worked
3 for everyone from National Geographic and Smithsonian to
4 Time and Newsweek, Businessweek, Forbes, so, you know, I've
5 paid my dues, which is something happened in a previous
6 generation. Now people just kind of start out and get
7 themselves a website and call themselves a business, but I
8 had large numbers of high quality photos. And so in the
9 past, I would have -- you know, ten years ago maybe, I would
10 have said, "No. I don't consider these people competition.
11 Their" -- "their" -- "the quality of their material is not
12 in my" -- "in my range," and so on, but, you know, things
13 have changed, and so now -- like -- I'll give you an
14 example. If this is the pizza or whatever, and this is my
15 piece of the pie, that's -- I -- I thought, well, there's no
16 one -- none of these people can take away my piece of the
17 pie, but, you know, all the people who are semipros and so
18 on, creating pictures now, can -- can, you know, take
19 nibbles away, and -- and then -- and so they -- they do
20 affect my business.

21 Q. Do you know what Canva is?

22 A. No.

23 Q. How about Pinterest? Is Pinterest a -- a source
24 of competition with you?

25 A. I wouldn't -- I wouldn't say it's a form of

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1 competition, but people have put about a hundred thousand
2 hit -- links of my photos on Pinterest.

3 Q. Do you do anything to try to prevent people from
4 downloading and using your photographs without your consent?

5 A. Yes.

6 Q. What do you do?

7 A. Well, primarily, I let it be known that it's not
8 okay, so it starts with the metadata. On the metadata of
9 every photograph -- all of my information, including
10 copyright notices, instructions, are on every photograph.
11 Now, that doesn't mean that people don't strip it away or it
12 get -- it gets lost. For example, if somebody, which is
13 often the case, takes a screenshot of one of my photos off
14 of my website or somewhere else, if they find it on the
15 internet, then there's no -- there's no metadata attached
16 any longer. On my website, on every single page, is a
17 disclaimer, a -- of a complete paragraph warning people not
18 to steal my photography and that I take it seriously and
19 that they can be sued in federal court. And as well, on my
20 website, that is provide -- provided by PhotoShelter, I have
21 disabled the ability to right click and save photographs to
22 anyone who visits my website.

23 Q. And when did you -- PhotoShelter, when did you
24 begin to use this --

25 A. I think --

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1 Q. -- service?

2 A. I think -- because a lot happened around the
3 economic crash of 2008/2009 -- I'm not telling you for sure,
4 but I'm guessing around 2009.

5 Q. Okay. And do you put watermarks on all your
6 photographs?

7 A. No, I do not.

8 Q. Why not?

9 A. Because it's aesthetically un- -- unpleasing.
10 Clients -- major clients who want to get -- legitimately
11 download my pictures and use them for comps for possible
12 use, do not want to see watermarks all over them. When I --
13 when I put them out into public, which is not my website,
14 for example, on social media, I do watermark them.

15 Q. Can you explain what it means to watermark a
16 photograph?

17 A. Well, you apply, with a program -- in this case,
18 from Lightroom, which is the main way that I do
19 postproduction -- it will overlay that onto the copy that
20 you create.

21 Q. Can you be a little more technical, a little more
22 descriptive, of what the proc- -- process is?

23 A. Well, there's not a process. I -- you know, like
24 if you have a picture -- and you go someplace into the
25 program, and you can, you know, write your copyright notice.

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1 I write, you know, "Copyright Blaine Harrington, III," the
2 year of publication, "All" -- "all rights reserved."

3 Q. And you do this digitally, I assume.

4 A. Correct.

5 Q. Could you not watermark a photograph without
6 having that interfere with your ability to provide the same
7 photograph to a client without the offensive appearance of
8 the watermark?

9 A. I'm not sure I understand the question. Can I --
10 can I put a watermark without making it be offensive? Is
11 that your question?

12 Q. Well, can you not apply a -- can you not provide a
13 photograph to a client, and then have a watermark version of
14 it posted on a website?

15 A. Yes, you could, but as I said, they -- the people
16 who -- the professionals who search my website find
17 watermarks offensive. If you would look at most
18 photographers' websites -- not stock agencies, but
19 photographers -- and if you would look at other websites on
20 PhotoShelter, for example, they do not contain watermarks.
21 It just isn't something that's done. And I'll add that
22 somehow is -- is a belief of some people, that a watermark
23 is what gives them the idea that they can't steal a picture,
24 and that's -- that's a fallacy. I mean, the idea that
25 people can search on the -- on the internet and take

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1 pictures and not assume that there's an owner of the picture
2 is -- is what gets people into trouble.

3 Q. Okay. I'd like you to go back to the document
4 that I had previously given you that I've marked as
5 Exhibit 1.

6 A. Uh-huh.

7 Q. And attached to and part of that document, as
8 Exhibit A, are a series of document requests, and I'd
9 like -- did you discuss these document requests with your
10 attorney?

11 A. No, only that he was denying them.

12 Q. Okay. Then let's --

13 MR. DeSOUZA: Well, Blaine -- Blaine, the --

14 MR. SQUIRES: No.

15 MR. DeSOUZA: Jeff --

16 MR. SQUIRES: Dan --

17 MR. DeSOUZA: Jeff, don't.

18 MR. SQUIRES: Dan --

19 MR. DeSOUZA: Jeff, don't.

20 MR. SQUIRES: It's his testimony, not yours, that
21 I am asking for here. And you do not have a basis for
22 objecting, so please wait until you have a basis for
23 objecting, and then feel free to object on legitimate --

24 MR. DeSOUZA: I am --

25 MR. SQUIRES: -- grounds.

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1 MR. DeSOUZA: I am objecting, so calm yourself
2 down before you start yelling at me. Okay?

3 MR. SQUIRES: I'm not yelling at you. I'm
4 explaining to you --

5 MR. DeSOUZA: Knock it off.

6 MR. SQUIRES: -- what your role is.

7 MR. DeSOUZA: Mr. Harrington, my instruction is
8 simply, do not get into the substance of any conversation
9 between you and me. If Mr. Squires had allowed me to get
10 that out, we wouldn't have to have this back-and-forth on
11 the record. I am simply asking, any attorney-client
12 communication between you and me, Mr. Harrington, please do
13 not reveal for purposes of today.

14 Mr. Squires, back to you.

15 MR. SQUIRES: Good.

16 Q. (BY MR. SQUIRES) Mr. Harrington, I -- if I ask
17 for you to divulge to me the content of communications
18 between you and your attorney, the content that are in
19 connection with your solicitation of or his provision of
20 legal advice, you don't have to answer. If I ask you, "Did
21 you discuss a certain topic with your attorney?" you are
22 required to answer. That is not protected by the
23 attorney-client privilege. Do you understand the
24 distinction?

25 A. Yes.

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1 Q. Good. So I guess I ask again. Did you discuss
2 with your attorney the subject of the document requests that
3 were served on you?

4 A. Not specifically, no.

5 Q. Okay. I'm going to go down the list. Number 1,
6 "Documents evidencing any damages you claim to have suffered
7 from the alleged infringements by each of the
8 Plaintiffs/Counterclaim Defendants in this case." Did you
9 bring documents with you?

10 A. No, I did not.

11 Q. Number 2 -- well, let me go back. Why not?

12 A. Jeff --

13 THE WITNESS: I mean, Dan --

14 Q. (BY MR. SQUIRES) You can't ask him.

15 A. Okay. Well, essentially -- essentially, I was
16 told that I --

17 MR. DeSOUZA: Hold on. No, Blaine. You're not --
18 you're not going to say what you were told. That is
19 attorney-client communications.

20 THE WITNESS: Okay.

21 MR. SQUIRES: That's true.

22 MR. DeSOUZA: You can answer the question --

23 THE WITNESS: Okay. Well --

24 MR. DeSOUZA: -- without getting into the

25 ~~substance of communications between yourself and counsel.~~

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1 THE WITNESS: Then I really have nothing to say,
2 because --

3 MR. SQUIRES: Okay.

4 THE WITNESS: -- it's -- it's all what we
5 discussed.

6 Q. (BY MR. SQUIRES) Number 2, "Documents evidencing
7 any efforts you have made since January 1st, 2017, to
8 identify any websites where photographs you had taken were
9 available to the public without notice of att-" -- "or
10 attribution of your authorship." Did you bring any such
11 documents with you?

12 A. No, I did not.

13 Q. Do you have any such documents?

14 A. I don't know.

15 Q. Okay. So I take it you did not search for any
16 such documents?

17 A. No, I did not.

18 Q. Item No. 3, "Documents evidencing correspondence
19 between yourself or your lawyers with any persons you have
20 accused of infringing copyright in your photographs, with
21 respect to infringement claims or [sic] demands you have
22 made for payment ... since January 1st, 2017." Did -- have
23 you brought any such documents?

24 A. No, I have not.

25 Q. Do you have any such documents?

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1 A. I don't know.

2 Q. Did you search for any such documents?

3 A. I did not.

4 Q. Number 4, "Documents evidencing correspondence
5 between yourself or your lawyers with any person [sic] you
6 have accused of infringing copyright in your photographs,
7 ... after the initiation of litigation about such claims,
8 since January 1st, 2017." I don't want to belabor this or
9 waste time. Would your answer to my question about each one
10 of these numbered items be the same?

11 A. Yes.

12 Q. And I'd say each one of these numbered items. I
13 mean between Nos. 1 and 12.

14 A. Correct.

15 Q. Okay. I'm going to show you -- and ask that it be
16 marked as Exhibit 2 -- a letter dated December 30th, 2021,
17 from CopyCat Legal to Ethan and Michelle Adler. Are you
18 familiar with this letter?

19 (Exhibit 2 marked.)

20 A. I am.

21 Q. Did you review it before it was sent to Mr. and
22 Mrs. Adler?

23 A. I'm not sure if I reviewed it. I -- I certainly
24 saw it once it was sent.

25 ~~Q. Okay. And in this letter, you see that there was~~

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1 a demand made -- on page 3, I believe, of this letter --

2 A. Uh-huh.

3 Q. -- that they pay \$30,000 within 14 days. Did you
4 specifically approve that demand?

5 A. No.

6 Q. Did you have anything to say about the selection
7 of that dollar amount as the demand?

8 A. In our dealings, this is a standard amount.

9 Q. When you say "a standard amount," what do you
10 mean?

11 A. This is the general request from a claim in --
12 in -- in -- in demand letters that -- that CopyCat has sent.

13 Q. And did you discuss with CopyCat the subject of
14 determining how much should be demanded?

15 A. No.

16 Q. So how do you know that this is a general amount?

17 A. Well, because we've -- we've had a number of these
18 demand letters, and they're -- they're all the same, the --
19 the amount.

20 Q. Who set the amount, the \$30,000 amount?

21 A. CopyCat.

22 Q. Okay. Have you ever licensed the right to a
23 photograph to a small business for use on its website as a
24 background image for \$30,000?

25 A. No.

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1 Q. Okay.

2 A. But if this is relevant, I would add that I have
3 had judgments far in excess of that amount, so it's -- it's
4 apples and oranges. They're not the same thing. What I
5 would license something for is not what I would expect when
6 someone has stolen my photography.

7 Q. You say you have had judgments far in excess of
8 that amount?

9 A. Yes.

10 Q. You have provided information in response to
11 written interrogatories previously in this case. Generally
12 speaking, do you recall -- do -- do you understand what I'm
13 talking about?

14 A. Yes.

15 Q. Is it not the case that in every case in which you
16 have received a judgment of an amount in excess of
17 \$30,000 -- or that that has been the case in which the
18 defendant that you sued did not appear, and that a default
19 judgment was entered by --

20 A. That's correct.

21 Q. -- by the Court as a result? Have you ever taken
22 a case of copyright infringement actually to trial?

23 A. No. Are you going to refer to this one more, or
24 should I put it aside?

25 ~~Q. You can put it aside. I'm going to show you~~

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1 another letter written by CopyCat Legal dated January 5th,
2 2022, addressed to Walt Arnold Commercial Brokerage, Inc.,
3 and I'm going to ask that this be marked as Exhibit 3.

4 (Exhibit 3 marked.)

5 MR. SQUIRES: And I want to make sure that the
6 court reporter understands, which I'm sure she will, I'm
7 going to lose track of numbers, eventually, and I'm going to
8 say, "Next."

9 (Court reporter response.)

10 Q. (BY MR. SQUIRES) Are you familiar with -- well,
11 you know, I -- I want to go back to Exhibit 2 and ask
12 another question; I apologize before. Exhibit 2 contains an
13 image. This is a black-and-white document that you're
14 looking at. It is -- does not have anywhere near the same
15 vibrancy of color -- even a color reproduction of the
16 photograph. But in Exhibit 2, the letter to the Adlers,
17 there's an image of the photograph. Do you see that image?

18 A. On page 3?

19 Q. On page 3 of -- of the --

20 A. Yeah; yeah. Yeah, I see it.

21 Q. Now, it's -- it is on page 3 of an attachment to
22 the letter, which is a draft of a Complaint that you sent
23 with the letter. If you look forward two pages, not
24 backwards. If you look ahead, you'll see that it is -- no,
25 no. You -- you're about to do the right thing. Yes. Next

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1 page; one more. You see that that's a draft of a
2 Complaint --

3 A. Correct.

4 Q. -- that was sent with the letter?

5 A. That's right.

6 Q. Okay. And the image is the image of the
7 photograph that you allege was infringed --

8 A. Correct.

9 Q. -- correct? Do you know when you took that
10 photograph?

11 A. Yes. As I -- as I stated earlier, these were all
12 made on one trip in fall of 2011, I believe.

13 Q. When you were the --

14 A. No, no. I'm sorry. I misspoke, because I -- and
15 this is -- you know, I've shot hundreds of thousands of
16 pictures, and the way they're identified is by the file
17 number. And it's 2012. October 8th, 2012, was the
18 beginning of the trip, so it was taken within that week.

19 Q. Was that the week that you were here as the guest
20 of something Albuquerque?

21 A. Yes.

22 Q. Okay. All right. Now we'll go back to Exhibit 3
23 and ask you if you recognize this letter.

24 A. Yes, I do.

25 Q. I'm trying to minimize duplication here, so I'll

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1 go as quickly as I can. Did you review this letter before
2 it was sent?

3 A. No. I don't think so.

4 Q. Okay. This letter also asks for \$30,000. In
5 fact, this is -- this letter is virtually identical with the
6 letter that was sent to the Adlers, Exhibit 2; is that
7 correct?

8 A. Correct.

9 Q. Okay. You had no input into the determination of
10 the amount of money being demanded?

11 A. Correct.

12 Q. Okay. And the image, which is, again, contained
13 on the attachment to that letter that is the subject of your
14 claim of infringement, when was that taken?

15 A. Well, as I stated, they were all taken at the --
16 during the same five-day period, sometime --

17 Q. Okay.

18 A. -- after October 8th, 2012.

19 Q. Okay.

20 A. I would add, as well, that this is a panoramic,
21 which is done by stitching a number of different photographs
22 together, so again, this adds to the value of the
23 photograph, because it's not something that most
24 photographers can do, and certainly not sort of semipros who
25 sell their work today.

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1 Q. Okay.

2 MR. DeSOUZA: Jeff, I'm assuming you're going on
3 to another letter. Can we take a quick restroom break just
4 before we do that?

5 MR. SQUIRES: Of course.

6 MR. DeSOUZA: All right. Thank you.

7 THE VIDEOGRAPHER: We're now going off the record.
8 The time is approximately 10:00 a.m. Watch your
9 microphones, if you stand up.

10 (Brief recess taken.)

11 THE VIDEOGRAPHER: We're now going back on the
12 record. The time is approximately 10:12 a.m.

13 Q. (BY MR. SQUIRES) I want to go back to Exhibit 2,
14 which is the letter to Adler.

15 A. Okay.

16 Q. And with respect to the photograph, have you
17 licensed that image to anyone?

18 A. I don't know.

19 Q. Okay. Fair enough. In Exhibit 3, which is the
20 letter to Walt Arnold, a copy of that image is attached I
21 think as the last page of the group of papers, the very last
22 page, very last page. Have you licensed that picture to
23 anyone else?

24 A. I don't know.

25 Q. I'm going to give you a document to be identified

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1 as Exhibit Next; I think it's 4. This is essentially the
2 same letter, correct, that --

3 (Exhibit 4 marked.)

4 A. I imagine, yeah. I -- I -- I believe so; yes.

5 Q. I don't want to repeat -- it also asks for
6 \$30,000. Your answers to my questions about this -- this
7 letter and the demand for \$30,000 would be the same as your
8 answers to the previous letter?

9 A. Well, I think I should expound on it a little
10 bit --

11 Q. Okay.

12 A. -- in that before any letters were sent, we had
13 discussed -- DeSouza and I had discussed that amount, and I
14 was okay with it. In terms of the specifics of the
15 different demands that have gone out, I was not -- well, it
16 was the same amount, so --

17 Q. So there's a certain one-size-fits-all aspect to
18 this? You were comfortable asking for the same amount of
19 money regardless of the individual photograph involved and
20 regardless of the individual use involved; is that correct?

21 A. As a starting point, yes.

22 Q. Okay. If you will look at the last page of
23 this --

24 A. Absolute last page?

25 Q. The absolute last page. This is -- this is the

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1 image involved that you were alleging infringement by
2 Xuan Nation, LLC, correct?

3 A. Yes.

4 Q. When did you take that?

5 A. Again, the same --

6 Q. If you -- if you --

7 A. -- the same week.

8 Q. -- say the same -- same time?

9 A. Yep.

10 Q. Okay. I know. And have you licensed this image
11 to --

12 A. I know that I have, because it's kind of a
13 best-selling image. It's been -- it's been used on puzzles,
14 for example, because I relicensed it not too long ago.

15 Q. How much have you licensed it for?

16 A. In total or -- or per?

17 Q. Per.

18 A. I don't know.

19 Q. Okay.

20 A. I mean, there -- you know, there's a wide range, I
21 would say.

22 Q. Okay. Have you produced copies of all the
23 licenses you have entered for that photograph in response to
24 the previous discovery requests in this case?

25 A. Not that I'm aware of.

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1 Q. Why not?

2 A. I -- I have done what I'm instructed by my
3 attorney.

4 Q. I request that you provide copies of all licenses
5 that you have entered for any of the photographs that are
6 the subject of your infringement claims in this case.

7 A. Now, beyond my own sales from my web- -- or that
8 I -- that I have invoiced myself, that becomes cumbersome,
9 because not all the agencies I work with gave really solid
10 information, so chasing some of that could be difficult.

11 Q. Well, I will leave that in your hands.

12 A. Well --

13 Q. I'm making the request.

14 A. Okay.

15 Q. Any Court -- and I think your lawyer will
16 confirm -- would require you to do so.

17 A. Okay.

18 Q. I'm going to show you a document marked as
19 Exhibit 5, which is a letter addressed to Ms. Collins and
20 Ms. Yevoli of the -- well, it doesn't make it clear. It's
21 addressed to two addressees, the CCIM Institute and the CCIM
22 Institute, New Mexico Chapter. You see that? Did you see
23 this letter before it --

24 (Exhibit 5 marked.)

25 A. Yes.

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1 Q. -- was sent? Did you discuss this particular
2 letter with your attorney?

3 A. No.

4 Q. Do you know anything about what the CCIM Institute
5 is?

6 A. I believe they have members who are realty
7 companies, and I think -- one thing I'm aware of is
8 they're -- is that they are -- they give guidance to their
9 members about copyright infringement, and that they
10 shouldn't infringe on people's copyrights.

11 Q. How do you know that?

12 A. I -- I -- I'm not sure.

13 Q. Before this letter was sent -- proposed, did you
14 have any knowledge of the CCIM Institute?

15 A. No.

16 Q. And the CCIM Institute, New Mexico Chapter, do you
17 know what that is?

18 A. A chapter of the national organization --

19 Q. Right.

20 A. -- I'm assuming.

21 Q. And did you have any knowledge of it before --

22 A. No, I didn't.

23 Q. -- this letter? And this letter also asks for
24 \$30,000. Would you say that the same -- would you give the
25 same answers if I asked you questions about how the \$30,000

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1 number was arrived at?

2 A. Yes. As I said, I -- I approved of it, but beyond
3 that, I can't say if I -- I was aware of -- of any other
4 specificity.

5 Q. You see the photograph that is the subject of this
6 letter and your claim. I believe that there's an image of
7 it on the very last page also.

8 A. Yes.

9 Q. Was this taken at the same time the other -- as
10 part of the same session of photographs in 2011 or '12
11 that --

12 A. 2012, yes.

13 Q. 2012, before. Have you licensed this image to any
14 others?

15 A. I'm -- I'm -- I'm not sure.

16 Q. And so you do not know, if you did, what the price
17 charged for such licenses was?

18 A. No.

19 Q. But this is one of the -- comprised within the
20 group of these four cases, the photographs that are the
21 subject of your claims of infringement. You will search for
22 and provide me copies of all licenses that --

23 A. Yes, as -- as I'm instructed by my attorney.

24 Q. You were here in Albuquerque, at that time, in

25 ~~connection with circumstances that you've described. How~~

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1 many images did you take at the time?

2 A. I can't say.

3 Q. Approximately.

4 A. Thousands.

5 Q. Thousands. Did you take thousands of pictures of
6 the Balloon Fiesta?

7 A. Well, as I say, the whole -- I -- I can't say.

8 I -- I can't say specifically. I -- I mean I'm sure I took
9 a lot.

10 Q. Hundreds, at -- at the very least, correct?

11 A. Certainly.

12 Q. And how about of the Albuquerque skyline, the same
13 thing --

14 A. No, not so many.

15 Q. Approximately how many?

16 A. Fifty or a hundred maybe.

17 Q. Okay. Did you take photographs of any other
18 identifiable vistas in Albuquerque at the time?

19 A. Yeah, some -- I think some other vistas, but also
20 other tourist-type attractions, like the -- the Indian --
21 I'm not sure what the place is called. There's a -- there's
22 a Native American --

23 Q. Something.

24 A. Site where they -- during -- I imagine they do it
25 regularly, anyway, but during the Fiesta, they do -- they --

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1 they do Native dances, and so on. Also in Old Town and --
2 yeah. I mean, you know, we discussed a number of things
3 that both they thought I would benefit from photographing
4 and also some things that they might have wanted to license.

5 Q. What percentage, approximately, of the photographs
6 you took during your visit to Albuquerque at that time were
7 taken of the Balloon Fiesta?

8 A. I can't say exactly.

9 Q. I am not asking exactly.

10 A. Well --

11 Q. More than 10 percent?

12 A. Yes.

13 Q. More than 20 percent?

14 A. I assume so.

15 Q. As many as half?

16 A. Perhaps.

17 Q. So probably thousands?

18 A. Perhaps.

19 Q. So far we've looked at four photographs. They are
20 the four photographs -- we've looked at the letters that
21 your lawyers wrote, to which were attached, in one form or
22 another, images of the photographs.

23 A. Correct.

24 Q. Have you won any awards for any of those
25 photographs?

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1 A. I don't believe so. Several -- several of the
2 photographs have been used by Bing as photo of the day,
3 which Bing is Microsoft, and they have access to hundreds
4 and millions of photos. Over a period of time, they've used
5 a number of my photos for different subjects, but on
6 different years that the Fiesta was beginning, they -- they
7 used my photo on multiple years -- different photos on
8 multiple years.

9 Q. Did they do so with your consent?

10 A. Yes.

11 Q. Do you have any written evidence of that?

12 A. Well, I had -- I had an agreement with them,
13 and -- and -- and then when they use it, they -- they send
14 you a notice, and -- and you get paid.

15 Q. I'd like to have you produce to me a copy of
16 whatever agreement, or agreements, you have had with Bing,
17 pursuant to which they were authorized to reproduce any of
18 those photographs. We're talking just about these four.

19 A. Right; right.

20 Q. Okay. I am going to show you a copy of the
21 Complaint filed by my clients in this case, which will be
22 marked as Exhibit Next; 6. Did you receive a copy of this
23 Complaint?

24 (Exhibit 6 marked.)

25 A. Yes, I did.

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1 Q. And did you review it?

2 A. Yes.

3 Q. And you discussed it with your attorney?

4 A. Yes.

5 Q. I'm going to show you a document marked as

6 Exhibit 7.

7 (Exhibit 7 marked.)

8 A. Are we not going to look at this more?

9 Q. No. And this was the Answer you initially -- your
10 attorneys initially filed in response to the Complaint.

11 A. Right.

12 Q. Did you review that before your attorneys served
13 it --

14 A. Yes.

15 Q. -- served it --

16 A. Yes.

17 Q. -- filed it --

18 A. Yes.

19 Q. -- filed it --

20 A. Yes.

21 Q. -- in this case? Okay. Did you approve of it?

22 A. Yes.

23 Q. Okay. I'm now -- I'm -- I'm done with that. I'm
24 now going to ask you to look at your First Amended

25 ~~Counterclaim and Third-Party Complaint, which should be~~

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1 marked as Exhibit -- and did you review that before your
2 attorney --

3 (Exhibit 8 marked.)

4 A. Yes.

5 Q. -- filed it?

6 A. Yes, I did.

7 Q. Do you know why -- what was different about this
8 document, what the amendment consisted of?

9 A. No, I don't recall.

10 Q. I'd like you to look -- I'm going to spend a
11 little time with this document now.

12 A. Okay.

13 MR. DeSOUZA: Jeff, you're still on the Answer?

14 MR. SQUIRES: I am on the Amended Counterclaim
15 and --

16 MR. DeSOUZA: Okay. Thank you.

17 MR. SQUIRES: -- and Third-Party Complaint.

18 Q. (BY MR. SQUIRES) Now, I'm going to reverse a
19 little bit and go back to the previous document. Apologize
20 for any confusion. This is the Answer, Counterclaim, and
21 Third-Party Complaint, before amendment, and it is
22 Exhibit No. 7 I think. In paragraph No. 10 of your
23 Answer --

24 A. Yes.

25 Q. -- you say that your works have been infringed

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1 thousands of times on the internet. What is the basis for
2 your saying that?

3 A. Having reverse searched and found them.

4 Q. Have you brought action or threatened to bring
5 action, hired lawyers to act on your behalf, with respect to
6 every one of those?

7 A. No.

8 Q. Why not?

9 A. It's -- it's -- that's impossible. I mean,
10 even -- I'm -- I'm a photographer, you know. My business
11 isn't -- isn't based upon these people infringing on me. I
12 do take very seriously that people do infringe, but it's
13 impractical to -- to -- to do action on all of them. I
14 would also add that -- you know, when I mentioned -- I think
15 I mentioned previously that we had originally found a
16 hundred thousand infringements. Many of those are outside
17 the United States and are in jurisdictions where I couldn't
18 do anything about it, anyway, such as China or India. I
19 have -- I have safari companies in Africa who steal my
20 wildlife pictures. Unless -- unless this was to become my
21 full-time job, there simply isn't enough time to -- to
22 handle the -- the, you know, great majority of these cases.

23 Q. Setting aside all those outside the
24 United States --

25 A. Right.

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1 Q. -- concerns and issues, have you brought actions
2 or threatened to bring actions or retained counsel to pursue
3 every instance of infringement you've identified on the
4 internet?

5 A. No.

6 MR. DeSOUZA: Object to form.

7 Q. (BY MR. SQUIRES) Okay. Why not?

8 A. For a variety of reasons. As I said, the
9 impracticality of some of them, the -- the -- just the
10 mechanics of maybe finding out about a particular
11 infringement and whether -- whether it's worth pursuing, and
12 then, of course, some of them are also by private
13 individuals, which are not pursued.

14 Q. I don't understand what you say when you say
15 "private individuals."

16 A. As opposed to a commercial company.

17 Q. So you've never pursued claims against private
18 individuals?

19 A. I don't believe so.

20 Q. Okay.

21 A. For example, on social media -- on LinkedIn, on
22 Facebook, and so on -- and there -- and a lot of those are
23 by private individuals as well.

24 Q. So explain what reverse image searching is.

25 A. Basically, in -- in the -- do you want to know in

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1 general or do you want to know in -- in -- in the
2 particulars of these cases -- your cases?

3 Q. Let's do general first.

4 A. All right. Well, I mentioned that I had worked
5 with Pixie, which is -- which is a company that helps
6 identify --

7 Q. Okay. But I'm not interested in Pixie for the
8 present purposes. I'm --

9 A. Well, the reason --

10 Q. -- interested in your reverse image searching.

11 A. Well, I did use Pixie for reverse image searching.

12 Q. In these cases?

13 A. No.

14 Q. Okay. So I'm interested in these cases.

15 A. Okay. So --

16 Q. I'm interested in what you did, because you've
17 represented that you didn't use Pixie, that you did this
18 yourself.

19 A. Correct.

20 Q. So tell me about reverse image searching.

21 A. Well, again, you take an actual copy of the
22 picture, and then -- and then you put it into TinEye or
23 Google Images or several others, and it will bring back the
24 results. And previously -- or I -- I -- I should say,
25 generally -- it doesn't have the ability to differentiate

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1 between legitimate uses and infringements, so I have to be
2 able to determine whether something actually was licensed,
3 as it should be, or whether someone took it and stole it.

4 Q. So do I understand when you do a reverse image
5 search that by use of the computer and the techniques that
6 you employ, you can find all the uses of -- all the
7 instances in which an image appears on a website accessible
8 on the web?

9 A. Ideally. I -- I can't say that -- that it finds
10 all of them.

11 Q. But -- but that's the general --

12 A. That's -- that's the idea.

13 Q. -- intent?

14 A. Yes; uh-huh.

15 Q. Okay; okay. And you find copies of your works on
16 websites, correct?

17 A. Yes.

18 Q. Unauthorized websites?

19 A. Yes.

20 Q. What do you do about it, if you don't file
21 lawsuits?

22 A. In some cases, I will ask -- pardon me -- I
23 will -- if -- if I can find the information on how to
24 contact the person who has the website, I will contact them
25 and ask them to remove it. For example, with nonprofits, I

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1 have contacted -- even in the -- even in this year, in the
2 period that I've been working with CopyCat, I've identified
3 some people who I wanted to give the ability to either just
4 remove the photograph with no payment or a very token
5 payment. I will -- I will add, however, that many of these
6 people don't -- don't respond. I -- I've had someone in
7 New Mexico, who was a nonprofit, who I said, "Please take
8 this down." They didn't respond; they didn't take it down.
9 Did that several times, and gave up.

10 Q. Who was that?

11 A. I don't -- I can't recall, but in -- in -- in
12 general, I will say that -- whether or not I'm only seeking
13 for people to remove the photos or to pay damages, if I
14 contact them directly, they do not take things seriously.
15 It's the American way. I mean, attorneys have to be
16 involved to get results. Most people -- I mean, a lot of
17 people don't even listen -- you know, don't even pay
18 attention when an attorney contacts them, but certainly when
19 a photographer contacts them, they're, like, not -- not --
20 not very compliant.

21 Q. So you've -- you've done reverse image searches on
22 each of the photographs that is the subject of your
23 infringement claims in this action, correct?

24 A. Correct.

25 Q. And you're familiar with a procedure called

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1 "takedown notices," correct?

2 A. I am.

3 Q. Have you ever issued a takedown notice to any web
4 host on which -- on whose -- the site that they hosted?

5 A. Yes, a few times.

6 Q. Can you give me the details of those times?

7 A. No. I -- I can only say that I've done it a few
8 times. You know, even that's time consuming.

9 Q. Have you ever -- so you did a reverse image search
10 on each of these photographs that are the subject of this
11 lawsuit, your -- your infringement claims. Have you issued
12 a takedown notice to any web host hosting any of the
13 photographs that turned up as a result of your reverse image
14 search?

15 A. In this case?

16 Q. Yes.

17 A. No.

18 Q. You are aware that there are multiple websites on
19 the internet on which each of these photographs can be
20 found?

21 A. No.

22 Q. You're not?

23 A. I -- well, I can't say I'm totally aware, no.

24 Q. You did reverse image search; didn't turn up
25 anything?

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1 A. I guess not.

2 Q. I'd like you to provide to me records of any
3 takedown notices that you've issued to any website host
4 during the past five years.

5 A. If possible. I'm not sure if I have that
6 information.

7 Q. You wouldn't keep it?

8 A. Not unless it was in an email or something; no.

9 Q. Well, I'd ask you to make your best efforts.

10 A. I will.

11 Q. Do you have any knowledge as to how Adler Medical
12 found the image that they used that you have accused them of
13 infringing your copyright?

14 A. No.

15 Q. Is the same true of each of the other three named
16 defendants in this lawsuit and the images that you claim
17 were infringed by them?

18 A. Yes.

19 Q. Similar question: But do you have any knowledge
20 of whether any of the four plaintiffs in this action who are
21 accused by you of infringement in your counterclaim were
22 aware -- do you have any knowledge of whether they were
23 aware of your copyright claim, ownership, in these
24 photographs?

25 A. No.

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1 Q. Now I would like to turn to your counterclaims,
2 which I believe are Exhibit 8. In paragraph 17 of your
3 counterclaims, you refer to the photograph that was used by
4 the Adler Medical party, and you say that the website where
5 you published your photograph uses technology to prevent
6 users from right-clicking and saving to their desktop?

7 A. Correct.

8 Q. And that's true with respect to all four of the --

9 A. Yeah, my entire website.

10 Q. Yeah. But you have no idea where the defendants
11 to your counterclaims obtained the images they used?

12 A. No.

13 Q. So you have no reason -- you have no reason to
14 believe that they found it on your --

15 A. I don't know.

16 Q. -- website?

17 A. Obviously, if I -- if I don't know where they got
18 it, I don't know if they got it on my website or elsewhere.

19 Q. And you know that it is available elsewhere,
20 correct?

21 A. No.

22 Q. You don't?

23 A. No.

24 Q. So you did a -- you did reverse image searches.

25 ~~A. No. What I'm saying is there's a possibility --~~

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1 THE WITNESS: I'm sorry.

2 A. There's certainly the -- the possibility, the way
3 the internet works, that images of mine could appear other
4 places that I'm unaware of.

5 Q. (BY MR. SQUIRES) Okay. So tell me what --
6 assuming they found your image on a website that did not
7 identify you as a photographer or copyright owner, what
8 could they have done to know that you were the copyright
9 owner and photographer?

10 A. They could have reverse searched it themselves
11 through Google Images, and more than likely, it would come
12 up with my website.

13 Q. More than likely?

14 A. I can't -- well, yeah. I mean, you know, the
15 workings of the internet, you can't be sure of anything --

16 Q. Right.

17 A. -- but there -- you know, as an example, I had
18 another case where we went to federal court in Denver -- a
19 balloon company from Albuquerque -- and they -- they had
20 their -- their web designer sworn in as an expert on the
21 matter, and he claimed that he spent an hour searching for
22 my photograph. I went home, fed it into Google, and found
23 it in about 30 seconds. So I'm not sure if that's
24 disingenuous. I mean, people who are web designers, web --

25 ~~you know, et cetera -- first of all, they should know the~~

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1 law. They should know that all photographs on the internet
2 can't be considered fair game and free photography. You
3 know, they should search for the source, and if they -- if
4 they don't, they're -- well, they're leaving themselves open
5 to litigation for stealing photos.

6 Q. Okay. Your reverse image searches of these
7 photographs turned up nothing, correct?

8 A. I'm not sure what you mean.

9 Q. I think I'm -- you said you conducted reverse
10 image searches of these photographs.

11 A. All I know is -- is what I found and what I --

12 Q. That's what I --

13 A. -- what I continued with. There may have been
14 other -- others that -- I can't say.

15 Q. Do you -- on what basis would you -- strike that.
16 Do you believe that it is reasonable to expect
17 that people who are not experts in photography or in the
18 operation of the internet should know what reverse image
19 searching was?

20 MR. DeSOUZA: Object to form.

21 A. If you are going to take a photograph for your use
22 on a -- for commercial purposes from anywhere on the web,
23 regardless of where you find it, it -- it is incumbent upon
24 you to try to find the owner or not use it.

25 ~~Q. (BY MR. SQUIRES) Okay. Other than your opinion,~~

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1 do you have any source on which you would rely as
2 authoritative in making that statement?

3 A. Well, just -- it's my experience as a photographer
4 and with copyright law and -- you know, look. You -- you --
5 you question why I pursue cases. From my point of view, all
6 the people who steal my photography are stealing from my
7 livelihood. And from my point of view, whether or not
8 people legitimately license my photographs or when they
9 infringe, are made to pay settlements, it's -- it's all the
10 same. I expect to be paid for all the photographs that
11 people use, legitimately or illegitimately.

12 Q. Do you expect to be paid more than your regular
13 licensing fee?

14 A. Absolutely.

15 Q. Why?

16 A. Well, because this is prescribed by the copyright
17 laws. You wouldn't -- if somebody -- if somebody -- you
18 know, let's use an example of not photography, something
19 tangible. If someone stole a bicycle from you, and six
20 months later you caught them with the bicycle, is it going
21 to be okay if they just hand it back? I mean, you know,
22 there's -- there's got to be -- there's got to be
23 repercussions for theft.

24 Q. Okay.

25 A. And -- and again, I don't make the decisions on

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1 that. They are prescribed by what has been written into the
2 copyright laws.

3 Q. So are you -- so that is the source of your
4 entitlement, what is written in the copyright laws, correct?

5 A. I believe so, yeah.

6 Q. Where, in the -- are you familiar with the
7 copyright law as it applies to your business practices?

8 A. In general terms.

9 Q. Okay. Where is it written in the copyright law
10 that you're entitled to recover more than the licensing
11 value of a photo if someone infringes it?

12 A. I don't know specifically. And -- and again, I
13 know that -- just from general knowledge about -- about
14 copyright infringements, that generally there's a multiplier
15 involved as a punishment, so oftentimes the multiplier is,
16 for example, at least five times what the licensing fee
17 might have been.

18 Q. Okay.

19 A. I think I need a short bathroom break, and really
20 just -- just to go to the bathroom, and I'll be right back.

21 Q. Sure. Can we try and make this as brief as
22 possible? Five-minute break?

23 MR. DeSOUZA: Fine -- fine by me.

24 MR. SQUIRES: Yeah.

25 ~~THE VIDEOGRAPHER: We're now going off the record.~~

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1 The time is approximately 10:59 a.m. Watch your microphones
2 when you stand up, please.

3 (Brief recess taken.)

4 THE VIDEOGRAPHER: We're now going back on the
5 record. The time is approximately 11:04 a.m.

6 Q. (BY MR. SQUIRES) Mr. Harrington, when you perform
7 reverse image searches, you do this on your computer, right?

8 A. Correct.

9 Q. Okay. I assume this would have been done at or
10 around the time -- just before your attorneys first wrote
11 letters -- the end of 2021, beginning of 2022 -- to the four
12 defendants to your infringement claims in this matter?

13 A. Yes.

14 Q. Okay.

15 A. Just -- just a moment, please. Okay.

16 Q. Do you keep your computer files?

17 A. Of what kind?

18 Q. Anything related to your business and the
19 litigation that you initiate.

20 A. I would take -- I would take a screenshot, myself,
21 of what I've found, and so -- what's your question? I'm
22 sorry.

23 Q. Do you keep computer -- do you keep your files of
24 all the actions you take?

25 A. No.

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1 Q. Why not?

2 A. Just -- just for expediency of keeping track of
3 things, I don't -- just like anything in your business, you
4 don't -- you don't keep everything. I mean, I keep what's
5 necessary. We find -- we find the -- a URL for the
6 infringing use of the photo, and, you know, of course,
7 that's matched to my photo to show that it's one and the
8 same.

9 Q. Okay. And do you dispose of --

10 A. Well, that might -- that might be all I have --
11 have -- have done. I don't know. But, you know, again,
12 I -- is everything that I do kept? No.

13 Q. Well, I'm concerned mostly about the reverse image
14 searches that you've said you conducted.

15 A. Well, I mean -- why?

16 Q. Why what?

17 A. Why -- why -- why would I? I mean, it's --
18 it's -- it's an unnecessary step. I identify the
19 infringements, and I move forward with those that I think
20 should be handed over to an attorney.

21 Q. Okay. I would ask that you provide all records
22 you have of any reverse image searches you conducted with
23 respect to the four photographs that are the subject of your
24 infringement claims in this --

25 A. ~~I'll discuss that with my attorney.~~

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1 Q. Yeah. Fine; fine. Looking at Exhibit 8 --

2 A. What page is that?

3 Q. I'm looking at page 7, and I'm looking at
4 paragraph 23. And it says that Adler Medical never
5 contacted you to seek permission to use the 2051 Skyline
6 Photograph. Am I right in saying that the only way he could
7 have known to contact you would be if he had done a reverse
8 image search of that -- strike that.

9 Assuming he didn't find it on your website, on
10 your website --

11 A. Right.

12 Q. Is it fair to say that the only way he could have
13 known to contact you would be if he had conducted a reverse
14 image search and it had revealed your website disclosing
15 information about your ownership?

16 MR. DeSOUZA: Object to form.

17 A. That -- I mean, that's completely a hypothetical.
18 He would have had to discovered who the owner of the photo
19 was, somehow, and -- and -- whether it was through a reverse
20 image search or some other means, I don't know, but that's
21 incumbent upon that person, as I said.

22 Q. (BY MR. SQUIRES) What other means?

23 A. Well, I don't -- I don't know, but, you know --
24 there -- you know, there are other places that identify me
25 as a photographer of images. They all haven't been stripped

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1 out, but I -- since -- since -- and since -- I think in all
2 cases of these four people -- four companies, that they
3 don't even know where they got them, from their answers
4 to -- to my attorney's interrogatories. I can't -- you
5 know, it's hard for me to speak hypothetically about what
6 they should or shouldn't have done to find it. They -- they
7 should have done that, but what the reference were, I don't
8 know.

9 Q. But what other than doing a reverse image search
10 could they have done?

11 A. Well -- that's most likely the way.

12 Q. Next page, paragraph 26, it says, "To date,
13 Harrington has been unable to negotiate a reasonable
14 license." Do you see that? What would be a reasonable
15 license?

16 A. Well, considering, rather than contacting my
17 attorney, you got these four people to sue me, then they
18 have -- and as far as I know from anything that has
19 transpired since then, they have been unwilling to discuss
20 settlements. A license fee would have -- you know, is --
21 where does it say "license fee"?

22 Q. It doesn't. It says "license." What's a
23 reasonable license? That's my question. I assume a
24 reasonable license would involve a fee. Is that a fair
25 assumption?

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1 A. Well, again -- this isn't my language.

2 Q. Don't forget the language.

3 A. So -- so what I'm saying is, you know, using the
4 word "license" is -- I think may be inappropriate, because,
5 you know, we're looking for --

6 Q. Well, let's --

7 A. -- for a copyright settlement.

8 Q. Forget -- forget paragraph 26. What would have
9 been a reasonable license fee for Adler Medical's use?
10 Adler Medical is a very small mom-and-pop business. Accept
11 that for the moment. I think your attorney will tell you it
12 is so.

13 A. Wait a minute. Well, again, if I'm looking at --
14 at notes about these uses by the four companies -- and
15 apparently Adler was using my picture for at least three
16 years, so again, that means they would be paying individual
17 licenses per year, times three. So what I would have
18 considered acceptable at that time was 4,500, before the
19 infringement, if they wanted to license the picture to use
20 for three years.

21 Q. Okay. I assume -- let's -- let's ask about each
22 of the individual parties then. How about Walt Arnold
23 Commercial Real Estate Brokerage? What would have been a
24 reasonable fee to charge to it?

25 A. Well, based upon them as an entity -- and

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1 apparently the photograph was used at least since mid-2020,
2 so that would be two years -- would be \$5,000; but if it was
3 used longer than that, then \$7,500.

4 Q. And what is the basis for your arriving at that
5 number?

6 A. Well, basically, a fee per year, and times two or
7 three, or whatever.

8 Q. Okay.

9 A. And then again -- and, you know -- and I --
10 obviously, understand, this is licensing. This is without
11 any kind of penalty for infringement.

12 Q. How about Xuan Nation?

13 A. 2,500.

14 Q. That would have been a reasonable fee?

15 A. Yeah.

16 Q. Okay. Reasonable license fee. And how about the
17 NM CCIM Chapter?

18 A. Again, we -- the assumption is that they used it
19 for several years, and the fee would be 5,000. If it was
20 longer than two years, 7,500.

21 Q. I'm going to ask you to look at paragraph
22 No. 76 -- oh, strike that.

23 82; paragraph 82.

24 A. Okay.

25 Q. On page 21 of Exhibit 8. It says, "Adler

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1 Medical's infringement was willful as it acted with actual
2 knowledge or reckless disregard for whether its conduct
3 infringed upon Harrington's copyrights." Do you have any
4 knowledge that Adler Medical acted with actual knowledge of
5 your copyright?

6 A. No.

7 Q. Do you have any knowledge as to whether its
8 conduct was done with reckless disregard for your rights?

9 A. Myself, no.

10 Q. Would the same be true with respect to each of the
11 four defendants in your counterclaim for --

12 A. Yes.

13 Q. -- copyright? Okay. Do you have any knowledge as
14 to whether any of the four defendants to your counterclaim
15 earned any profits as a result of your --

16 A. I do not.

17 Q. -- of their -- of their use of your photograph?

18 A. I do not. Are we referring to this one any
19 longer?

20 Q. No; nope, nope, nope. I'm going to show you what
21 is a list of cases identifying you as a plaintiff in federal
22 court system over the past years. I represent that most, if
23 not all, of these cases are within the past five years, but
24 I don't want to represent that the year of the case is

25 indicated in the case numbers shown. This is Exhibit 9.

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1 This is not complete. I represent that this was -- list was
2 printed out on January 27th of the current year. There are
3 additional cases that have been filed since then. Take a
4 little --

5 (Exhibit 9 marked.)

6 MR. DeSOUZA: Jeff, can you just -- Jeff, since --
7 since I don't have it, can you just tell me is this -- is
8 this that PACER list?

9 MR. SQUIRES: It's the PACER. Yes; yes. It's the
10 same. You've seen it. It's the PACER listing that was
11 attached to interrogatories that I --

12 MR. DeSOUZA: Okay. Thank you.

13 MR. SQUIRES: -- served.

14 Q. (BY MR. SQUIRES) And I would ask you if you can
15 do a quick review and tell me if any of these cases are
16 different in nature from the current case, meaning were they
17 not the result of someone using a photograph of yours on a
18 website or social media page that produced the litigation.

19 A. Some of these aren't copyright infringement.

20 Q. Oh. Well, tell me which ones are not copyright
21 infringement.

22 A. On the first page, the fourth and the fifth were
23 damage to a house.

24 Q. Oh, okay. Gotcha.

25 A. Also page 2, the very top one, that says, "Zurich

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1 American Insurance" -- "Oldach Windows," same thing. On
2 page 6 --

3 Q. Is --

4 A. -- the third one down --

5 Q. Is that the one that says "6 out of 10," on the
6 lower right?

7 A. Yes.

8 Q. Okay.

9 A. The third -- the third item --

10 Q. Right.

11 A. -- says, "Genetically Modified Rice Litigation,
12 Missouri Eastern Court."

13 Q. Yeah.

14 A. I think it must be another Blaine Harrington --

15 Q. Okay.

16 A. -- because I don't do corn. There are several on
17 page 9 of 10 at the top, first two boxes.

18 Q. Yes.

19 A. One says, "Ergo Science v. Martin" --

20 Q. Yeah.

21 A. -- "Texas Northern District." I don't recognize
22 that as mine. And then the second one says, "Harrington v.
23 Curis RIS, Virginia Eastern." As far as I know, that's not
24 mine as well. There's some -- yeah. I mean, there's some
25 of the -- there -- there are some that -- most of them, I

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1 can identify. There are some, the names, that don't --
2 don't ring a bell. And then on page 2 of 10, there are --
3 the bottom two. One is Harrington v. McGraw-Hill, and the
4 other is Harrington v. Pearson. These are involved in --
5 both of these textbook publishers exceeding their licenses,
6 which they -- which they did commonly, and they were sued by
7 many well-known stock photographers. So those are -- those
8 are based on -- on print and not web uses.

9 Q. Did either of those go to trial?

10 A. No. They settled.

11 Q. I'm going to give you a document marked as
12 Exhibit 10, I believe. I think I've got it right so far.
13 These are the initial disclosures that you provided in this
14 case. Are you familiar with this document?

15 (Exhibit 10 marked.)

16 A. Yes.

17 Q. It has prompted a few questions on my part. Do
18 you use -- one of the things you were required to provide --
19 one of the -- the information that you were required to
20 provide in this is the identification of individuals likely
21 to have discoverable information. Do you have an agent?

22 A. No.

23 Q. Have you ever used an agent?

24 A. No.

25 Q. Other than -- other than stock photo agencies?

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1 A. Those are the only ones.

2 Q. There is a name listed on page 3 that I don't
3 recognize. Ryan Garcia, care of Peacock Law, do you have
4 any idea who that is?

5 A. No, I don't.

6 Q. Okay. There is a category of information you were
7 required to provide, insurance agreements. You have no
8 insurance that covers infringement of your copyrights?

9 A. No.

10 Q. Have you discussed such an issue with any
11 representative of any insurance company?

12 A. No.

13 Q. Why not?

14 A. I don't know; I haven't.

15 Q. One of the areas that you were required to address
16 is the location or description of documents, and you
17 referred to the fact that they're generally located on your
18 computers or email accounts. Have you done anything, other
19 than things that we have discussed recently, to delete
20 information from your computers in the past five years?

21 A. Referring to a case?

22 Q. Re- -- referring to --

23 A. I mean, I --

24 Q. -- your -- your photographs and any claims for --

25 A. No.

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1 Q. -- infringement that you assert?

2 A. No; no.

3 Q. Okay. Have you changed computers?

4 A. No.

5 Q. What kind of computers do you use?

6 A. Mac.

7 Q. Do you have more than one?

8 A. Yes.

9 Q. Do you use them for -- certainly, photo editing, I
10 assume?

11 A. Uh-huh.

12 Q. What else? How many do you have?

13 A. I have -- I -- I have two. I have a desktop
14 computer, you know, a -- a tower, that is the main office
15 computer in my office, and then I have a laptop that I take
16 on location.

17 Q. But I assume they share files and information?

18 A. Right, because Apple shares, so your Apple
19 devices.

20 Q. And what computer programs do you use for editing
21 and the like?

22 A. Primarily Adobe and Lightroom, which is part of
23 Photoshop.

24 Q. I would like to have the next document marked as

25 ~~Exhibit 11. This is Defendant's Responses to First Set of~~

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1 Interrogatories.

2 (Exhibit 11 marked.)

3 MR. SQUIRES: I may have included something I
4 didn't mean to include; yes.

5 Q. (BY MR. SQUIRES) And same with you,
6 Mr. Harrington. If you could give me that back just for a
7 second. I think I may have provided more than I wanted to.
8 I'm -- I'm looking at Request No. 11 and 12, and they --
9 they are similar in discussion. It says, "Identify any
10 website, including the host, of which you've become aware,
11 on which any of your photographs have been posted." And you
12 provided an answer, a response, and it says since October --
13 your response, since October 2012, you've become aware of
14 thousands of infringements with many individual photographs
15 being used without your permission, and you explained this
16 previously. I don't want you to reiterate your subject --
17 your previous testimony. And you say the photographs
18 available at your website appear on 150 to 200 websites you
19 haven't authorized. How do you know that?

20 A. That answer is provided by my attorney.

21 Q. Okay. Are you aware of any websites, ever
22 anywhere, accessible on the internet that contain galleries
23 of large numbers of photographs?

24 A. No.

25 ~~Q. You're not aware of any such --~~

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1 A. No. I mean, I've seen some things, but I -- I
2 can't give you any specifics.

3 Q. But you've seen such things?

4 A. I -- I'm aware that a lot of my photographs are
5 around the internet.

6 Q. And -- and are you --

7 A. Something that you've said I planted, but I did
8 not.

9 Q. Oh, no, I never said that.

10 A. Well, that's essentially your claim.

11 Q. No. If -- if you believe that, you haven't read
12 carefully and you haven't heard carefully.

13 A. Um.

14 Q. So I'm going to repeat my question. Are you aware
15 that there are websites that contain galleries of
16 photographs, of many photographs, that are available on the
17 web?

18 A. Galleries? No --

19 Q. "Galleries" --

20 A. -- I'm not aware.

21 Q. -- meaning "lots of photographs."

22 A. No, I'm not aware.

23 Q. Has anybody ever told you that there were such
24 sources of photographs on the web?

25 ~~A. No, not specifically; no. You know, as I said --~~

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1 Q. What -- what do you mean "not" --

2 A. -- my -- my attorney -- my attorney has looked
3 into these things and is aware of -- of a lot of the illegal
4 uses of my photos, but I'm not.

5 Q. But you're not. Okay. Okay. Have you engaged
6 anyone to act as an expert witness in this case?

7 A. No, I haven't.

8 Q. I'm going to show you a document that I've -- is
9 going to be marked as Exhibit No. Next. Do you recognize
10 this?

11 (Exhibit 12 marked.)

12 A. Yes.

13 Q. This was prepared by your attorney, correct?

14 A. Correct.

15 Q. Did you review it before it was submitted?

16 A. Yeah; yes.

17 Q. Okay.

18 MR. DeSOUZA: Jeff, can you identify it for me?

19 MR. SQUIRES: I'm sorry. It's Defendant's
20 Responses to Plaintiffs' First Request for Production.

21 MR. DeSOUZA: Thank you.

22 Q. (BY MR. SQUIRES) Request No. 2, 3, 4, and 5 ask
23 you to produce documents evidencing certain expenses that
24 you have incurred in taking each of the four photographs in
25 this section, and you say you have no documents responsive

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1 to this request. Do you not normally keep documents
2 evidencing expenses you incur in taking photographs?

3 A. I keep general copies of expenses for tax purposes
4 for a period of time, and considering these photographs are
5 taken nine years ago, there's a very good chance I don't
6 have any --

7 Q. Okay.

8 A. -- any receipts or things like that.

9 Q. Okay. And in fact, we now know your expenses were
10 all -- many of your expenses were picked up by --

11 A. Some of them were, yeah. I mean, I'm sure I had
12 other expenses, but yeah, quite a few were picked up by
13 them.

14 Q. What was the name of the organization?

15 A. Visit Albuquerque.

16 Q. Visit Albuquerque. Request No. 6 through 9 asked
17 you for correspondence with the copyright office concerning
18 your application to register copyright in these photographs.
19 And you say you don't have any?

20 A. In general, when you register a set of
21 photographs, you go onto the copyright office website and
22 you fill out the forms, and then what is generated back to
23 you is the copyright certificate. So normally, you don't
24 have any correspondence with them. You just fill out the
25 forms, and they register the photographs.

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1 Q. And this was done; however, am I correct in
2 assuming that these were registered as part of a
3 registration of a large group of photographs?

4 A. Very possibly, yes.

5 Q. And when you do that, don't you have to submit
6 material to the copyright office in addition to --

7 A. Yes.

8 Q. -- filling the forms --

9 A. I -- I'm sorry. Yes. I would have small, low res
10 JPEGs that -- that are provided as part of the registration.

11 Q. And you would have had to do that separately, by
12 mail, right?

13 A. No. It's -- it's all done online.

14 Q. And you have no communication and no reference --
15 no reference to the communication and the correspondence
16 with the copyright office about the submission of those?

17 A. No. I mean, they wouldn't get back to you unless
18 you had a problem with it, and they weren't going to --
19 either you did something wrong -- there was something wrong
20 in your application or they weren't going to honor it, which
21 has never happened. So no, I don't have any.

22 Q. But how do you submit these JPEGs?

23 A. Online.

24 Q. And you do that --

25 A. As part of the application. Like -- I'll explain

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1 it to you. You go on. There's a form you fill out.
2 There's, like, ten different forms that are mostly copies of
3 your name on all these forms, and then they -- you have to
4 pay for it by credit card, and so then they -- you
5 temporarily -- pardon me -- temporarily leave the -- the --
6 the copyright office website. You pay for it, and then once
7 it's paid for, they say, "Back to the copyright office," and
8 at that point, you -- you add on all of these photos in a
9 folder.

10 Q. And this was part of a group registration,
11 correct? We talked about that?

12 A. Yeah.

13 Q. These photos? Do you remember how many photos
14 were in that group?

15 A. No.

16 Q. And -- and -- but there was no separate email
17 or --

18 A. No.

19 Q. Request No. 14 -- well, strike that.

20 Numbers 10 through 13 ask for documents supporting
21 your allegation that these entities acted willfully in
22 connection with the alleged infringement. You've testified
23 that you have no such evidence, correct, with respect to any
24 of these?

25 A. As I said, this is -- this is created by my

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1 attorneys, and I have no specific knowledge beyond the fact
2 that I agreed to it.

3 Q. Okay. And No. 14, documents evidencing the terms
4 of licenses you've granted for others to use the Adler
5 photograph. And you have no such licenses it says. That's
6 correct? Yes?

7 A. Yes.

8 Q. Number 15 is the same question with respect to the
9 Arnold photograph. You say the same thing, correct?

10 A. Yes.

11 Q. And 16 is the same with respect to the Xuan Nation
12 photograph?

13 A. Yes.

14 Q. And 17 is the same thing in connection with the NM
15 CCIM Chapter?

16 A. Yes.

17 Q. So you have no evidence of previous licenses of
18 those photographs?

19 A. No.

20 Q. Number 18 is documents evidencing the terms on
21 which you've agreed to settle any claims. And you've
22 objected to that. Your lawyer --

23 A. Yes.

24 Q. -- has objected to that. If that objection were
25 not to be vindicated by the Court, would you have documents

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1 responsive to this request?

2 A. Yes.

3 Q. And No. 19 says, "Documents" -- asks for documents
4 evidencing actual damages you have suffered as a result of
5 Adler Medical's -- and then 20, 21, and 22 are the same for
6 the others. And you say you are producing documents
7 contemporaneously herewith. We'll get to those documents,
8 but can you recall what documents -- the types of -- nature
9 of documents you have that are responsive to that request?

10 A. No.

11 Q. Numbers 23 through 26, one with respect to each of
12 these four parties alleged to have infringed, ask for
13 documents evidencing licensing of those photos. You claim
14 not to have any. Did you look?

15 A. Yes.

16 Q. And you found none?

17 A. Correct.

18 Q. And you recall none?

19 A. Correct.

20 Q. Okay. Number 28 through 30 -- well, I guess it's
21 27 through 30 -- asks for agreements with photo agencies or
22 similar -- and you've produced those, correct?

23 A. I believe so.

24 Q. And No. 32 -- well, strike that.

25 ~~Number 31 says, "Notices you have sent to any~~

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1 person by which you sought removal of any photographs you
2 have created from any website on which a photograph in which
3 you claim to own copyright has been posted," and you
4 object -- your lawyer objected to that on a ground that has
5 been repeated numerous times, as set forth in your answer to
6 Item No. 1. But if a Court did not validate that objection,
7 you would have documents responsive to that request? Is
8 that accurate?

9 A. I don't know.

10 Q. Number 32 says, "Documents, other than those
11 responsive to the preceding Request No. 31, evidencing any
12 action you took to prevent any website or host from using,
13 reproducing, or displaying any photograph you claim to own
14 the copyright." And you say, "Documents responsive to this
15 request are being produced contemporaneously herewith." Do
16 you recall what documents you produced?

17 A. No.

18 Q. Okay. I'm finished with that, but keep it at the
19 ready, because that last document that we have been dealing
20 with, which I think was Exhibit 12 --

21 (Court reporter response.)

22 Q. And while this is bulky -- the easiest way for me
23 to do this -- I apologize to everybody -- is just to give
24 you a set of all the documents you produced in discovery,

25 marked as Exhibit No. Next.

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September 28, 2022

1 (Exhibit 13 marked.)

2 A. I think I'm going to need another very quick
3 break.

4 Q. Sure; sure. It's 12:00 noon.

5 MR. SQUIRES: Do you want to go off the record?

6 THE VIDEOGRAPHER: We're now going off the record.

7 The time is approximately 11:57 a.m.

8 (A discussion was held off the record.)

9 THE VIDEOGRAPHER: We're now going back on the
10 record. The time is approximately 12:06 p.m.

11 Q. (BY MR. SQUIRES) When documents were produced,
12 they were nicely and properly identified to the individual
13 requests to which they were responsive. I may not have
14 broken them out in the set that was given to you just now as
15 well --

16 A. Right.

17 Q. -- although they are in the sequence of what I
18 have in my hands here.

19 A. Okay.

20 Q. This -- after the -- can you find this page? It
21 would be near the top, with a stethoscope pictured.

22 A. Oh.

23 Q. After -- after the lawyerly stuff. No. No, no,
24 no.

25 A. Oh, okay.

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1 Q. No, no, no. Near the top -- near the very top. A
2 couple pages in from the very top. Here. You're doing this
3 more slowly than -- let me help you.

4 A. Oh.

5 Q. Just a few pages in, I think, starting with the --
6 the pictures. There we go.

7 A. Okay.

8 Q. There you go. This is -- and this is
9 responsive -- these -- these documents -- the next probably
10 20 pages or so are photographs, medical sort of subjects.
11 But answer my question, if you will. The Request for
12 Production No. 10 asks for documents supporting your
13 allegation that Adler Medical acted willfully in connection
14 with its alleged infringement of your copyright, and it
15 says, "Documents responsive to this request are being
16 produced contemporaneously herewith." And those are the
17 documents that are marked as RFP No. 10 --

18 A. Okay.

19 Q. -- starting with this, until you get to documents
20 that are No. 11, and then they're about 20 pages down, and
21 there's probably a -- a page that says, "11."

22 A. Are all these Adler pages on there?

23 Q. They are.

24 A. Okay.

25 Q. And my question is, how do these pages show that

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1 Adler Medical acted willfully?

2 A. Well, again, these were produced by my counsel,
3 not by me, and so I don't -- the answer is, I don't know.

4 Q. Okay. Fair enough. The next is RFP 11. Now
5 we've -- you've got the rhythm. You understand what's --
6 I'm doing here. And this is the same question about Arnold
7 Brokerage. And so what I'm asking you is, how do these show
8 that Arnold Brokerage acted willfully?

9 A. Well, my answer is the same.

10 Q. I understand, but say it.

11 A. I -- I did not produce these, and I'm not able to
12 answer.

13 Q. Okay. The next is No. 12 -- RFP 12.

14 A. Okay.

15 Q. First, it's a -- first picture is a series of
16 bowls, but -- and -- and "Xuan Nation [sic]" in the upper
17 right-hand corner.

18 A. Yeah.

19 Q. It's a -- it's a --

20 A. I think I'm in the neighborhood.

21 Q. Oriental -- oriental restaurant.

22 A. Uh-huh.

23 Q. And I -- I ask the same question. How do these
24 documents show that Xuan Nation acted willfully in
25 connection with the alleged infringement?

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1 A. As I said before --

2 Q. If you want to just say, "The same answer
3 applies" --

4 A. No -- yeah. I mean, I -- I did not compile these
5 examples, and so I -- I cannot answer.

6 Q. Okay. When your attorney provided the written
7 response to these document requests and the written
8 responses that cover document that --

9 A. Uh-huh.

10 Q. -- is -- did he show it to -- did he show it to
11 you before he produced it?

12 A. This part here?

13 Q. Yes, the written responses.

14 A. Yes. I'm sure he did.

15 Q. Okay. Did he show you the documents that he was
16 producing with it at the time?

17 A. These?

18 Q. Yes.

19 A. No.

20 Q. Okay. And I think that the last question in this
21 category is No. 13, documents supporting your allegations
22 that NM CCIM, the Chapter, acted willfully. And if the same
23 answer you provided previously applies to this as well --

24 A. Yes.

25 Q. -- you can just say that.

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1 A. Same answer.

2 Q. Okay. Number 19 --

3 A. Are we back at the beginning, at the -- this?

4 Q. Yes, sort of, No. 19 -- but there are also
5 documents that are so marked -- documents evidencing actual
6 damages you've suffered as a result of Adler Medical's
7 alleged infringement, and 20, 21, and 22 follow same
8 requests with respect to each of the named defendants --

9 A. Uh-huh.

10 Q. -- in your case. And your client [sic]
11 produced -- if you could pull out these documents.

12 A. You mean my attorney produced?

13 Q. Your attorney. Sorry.

14 A. Okay.

15 Q. And they're a series of licenses all on a form
16 that you use. I -- I believe that's fair, but you can
17 confirm that if you would --

18 A. Yeah.

19 Q. These are all your form licenses, right?

20 A. Correct.

21 Q. Okay. Good. I'd like to go through each of these
22 licenses. The first one is dated April [sic] 21st, 2016, to
23 Rachel Winstead. I'm not going to read the whole thing,
24 just so we can identify that. You've got that in front of
25 you?

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1 A. The one I have says, "July 22nd, 2016."

2 Q. We may be looking at different dates too, but can
3 you show me that? This is the same one. It says
4 "July 21st" in the upper right-hand corner. You see that?

5 A. Yes.

6 Q. Okay. To Rachel Winstead, correct?

7 A. Correct.

8 Q. It's a license. Can you tell me what that was a
9 license for?

10 A. Front cover of a magazine.

11 Q. What magazine?

12 A. AAA Living.

13 Q. It's only for two months --

14 A. Correct.

15 Q. -- correct?

16 A. Uh-huh.

17 Q. Now, that didn't mean that they couldn't keep and
18 have magazines available for a longer period than two
19 months, right?

20 A. Well, you know -- I mean, as far as I know, when
21 they go to print, they're mailed out to their circulation.

22 Q. Right. People may keep it for years?

23 A. Oh, of course.

24 Q. Okay. And you charged \$1,350?

25 A. Correct.

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1 Q. It was a magazine cover for a large national
2 publication, right?

3 A. Correct.

4 Q. Okay. In print and digital form, right?

5 A. Correct.

6 Q. Five million copies authorized?

7 A. Yes.

8 Q. All those things factored into the price you
9 charged, did they not?

10 A. Yes. But I might add, when you have regular
11 clients that you work with, oftentimes, they have a
12 framework in place of what they are allowed to pay for
13 specific uses. So in some cases, and especially when I
14 don't know the client well, then I would either dictate what
15 I thought was appropriate or then that would be negotiated,
16 and in some cases -- and I can't say specifically in this
17 one, but I'm just telling you how it works, that, you know,
18 they have a specific rate they will pay, and I agree to it.

19 Q. Okay; okay. Going to the next license, to Steve
20 Streit -- I don't know how to pronounce it -- December 29th,
21 2020. You see that?

22 A. I do.

23 Q. This was for Balloons Over Rio Grande. Do you
24 remember the picture?

25 A. Yes. It was the one that I mentioned, and I'm --

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1 I'd have to look back as to which -- which -- I think this
2 might have been Xuan Nation, the -- I'd have to look back
3 to -- but this is --

4 Q. This is the same --

5 A. This is the -- this is the photograph that I said
6 has been used extensively, and I think I mentioned that it
7 was used on puzzles.

8 Q. So when I asked you a question, earlier, if any of
9 these photographs had been subject to other licenses, and
10 you said, "No" -- I'm not suggesting you were lying. I
11 don't think you were lying. I don't -- no implication --
12 you were wrong.

13 A. Apparently so. I mean -- again, I don't remember
14 what -- I don't remember every sale I ever made; and I also
15 don't remember what documents were produced, either, so --
16 but I had mentioned that -- that -- somewhere in the
17 conversation, that -- that -- that that photo had been used
18 extensively, and it had been used for a puzzle.

19 Q. So somewhere along the line, some of your answers
20 have been inaccurate, unintentionally?

21 A. Perhaps. Certainly not intentionally.

22 Q. Well, some. And you charged 2,000 -- what was
23 this -- how was this used?

24 A. Puzzle.

25 ~~MR. DeSOUZA: Object to form.~~

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1 A. And --

2 Q. (BY MR. SQUIRES) A puzzle -- what -- what do you
3 mean? They sold a puzzle? It was a -- they produced --
4 manufactured and sold puzzles?

5 A. Correct. That's their business.

6 Q. Okay.

7 A. And it was a relicense. I think it may have been
8 licensed originally through a stock agency, but this was not
9 the first time they had used it.

10 Q. So this is four years, \$25,000 -- 25,000 quantity
11 of puzzles authorized throughout North America, exclusive,
12 and \$2,000? All correct?

13 A. Correct.

14 Q. Okay. Next. The next license is dated
15 December 14th, 2007, Anchorage Convention & Visitors Bureau.
16 What was this for? "Ad running in Alaska Airlines." Do you
17 remember that?

18 A. I do now, by reading it.

19 Q. Sure. Do you remember the photograph?

20 A. Yes.

21 Q. Okay. Now, Alaska Airlines is not United, but
22 it's a big airline, right?

23 A. Yeah. I mean, it -- it ran in their in-flight
24 magazine.

25 ~~Q. Right. \$1,100. This was in 2007, a time ago. I~~

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1 understand.

2 The next, dated August 24th, 2021, to Andres
3 Restrepo. Do you remember this?

4 A. I do.

5 Q. What was it for?

6 A. It was licensing for -- there was one image of
7 mine that they licensed, originally, for display in an
8 office building, and then they came back and relicensed for
9 several other locations. And then some of this -- the
10 lower -- the -- the fee at the bottom, 700 times two, was
11 the fact that they wanted to make larger prints, so they
12 paid an additional fee for that.

13 Q. Now, Andres Restrepo is -- is he the
14 representative?

15 A. He is like an interior designer, I believe, who
16 works for Bowlero, and for whatever reason, that was sent to
17 his home address in California, but it was paid by Bowlero.

18 Q. What's Bowlero?

19 A. Bowlero owns a bunch of -- national chain of
20 bowling alleys.

21 Q. You get free lanes?

22 A. I don't know. I suppose if I asked. Yeah. So --

23 Q. Okay. The next one is another to Andres Restrepo,
24 dated December 15th, 2020. Same sort of -- I mean, also on
25 behalf of Bowlero?

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1 A. Yes.

2 Q. Now, the -- these were just stock photos that you
3 had in your portfolio, right?

4 A. Yes.

5 Q. What was -- was it the same photo every --

6 A. Yeah. It was all one photo.

7 Q. What was it a photo of?

8 A. It's a photo of a -- a vintage Porsche Speedster
9 in California, along the coastline, convertible, with a
10 surfboard sticking out the back, something that's -- kind of
11 screams California.

12 Q. When did you take the photo?

13 A. Well, it was taken in 1997.

14 Q. Did you take it on commission at the time or was
15 it a --

16 A. No, I didn't.

17 Q. Okay. How did they come across it? Do you know?

18 A. Either from my website or from a stock agency
19 website, because it was also sold by at least one stock
20 agency at one point.

21 Q. Okay. Next, December 7th, 2006, Jennifer Wilson,
22 Marketing Manager, et cetera. What was this for?

23 A. Cover of their visitors' guide.

24 Q. Is that a big deal?

25 ~~MR. DeSOUZA: Object to form.~~

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1 A. What do you mean "a big deal"?

2 Q. Fair enough. Is this a significant publication?

3 A. Well, I think every city, including Albuquerque,
4 has a visitors' guide, which is given free to visitors and
5 is full of things you can do and ads of restaurants, and so
6 that's -- it's pretty common. I think every -- just about
7 every city of any consequence has one.

8 Q. So this is a picture of a church, apparently.

9 A. Yes.

10 Q. And -- and a -- separately, a picture of twilight.

11 A. Correct.

12 Q. And it says, "Street, one-half page use inside
13 Visitors' Guide." What does that mean, if you know?

14 A. I'm sorry. Repeat that, please.

15 Q. It's just a line item here on the -- "Street,
16 one-half page use inside Visitors' Guide."

17 A. Oh, well, that's just a continuance of the
18 previous line. So it said, "Twilight view of East Bay
19 Street, half-page use inside Visitor's Guide."

20 Q. I see; I see. So there's no additional -- it's
21 just part of the \$600 charge for that photo? Okay. Do you
22 get credited on the cover? Does it say, "Copyright Blaine
23 Harrington"?

24 A. Not on the cover, per se. It -- probably on the
25 table of contents page, or something like that. That's

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1 certainly a stipulation of sales editorial, is that they
2 do -- do give you a photo credit.

3 Q. Next is to Brian Miller, Photo Editor, at
4 Diversion Magazine, July 9, 2007, Cover assignment fee. So
5 this was an assignment?

6 A. Right. So in other words -- I mean, there's --
7 there's different things that are on here. So -- so an
8 assignment fee is what would have been paid to me to do it.

9 Q. Right.

10 A. Then additionally, they paid -- because they used
11 it for the entire cover. So you can add, like, 1,200 and
12 500 together, and then, as well, there was an additional
13 half-page photo, and then they paid -- they paid -- I'm not
14 sure. Part of it is digital postproduction, but I'm not
15 sure exactly -- if -- if they used more photos. I'm not
16 sure how that worked at that time.

17 Q. Okay. Next is to Future Energy Project,
18 December 1st, 2011, Blue Lagoon. How did this come to pass?

19 A. Well, this was -- and again, I'm -- I'm searching
20 my memory myself, but this was like a -- a major supplement.
21 I'm not sure if it went into newspapers or something like
22 that, but it was, you know, producing new forms of energy.
23 So the picture that they used was a famous place in Iceland
24 called "Blue Lagoon," which is a tourist attraction, but
25 ~~it's also next to a geothermal power plant. So you have the~~

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1 steam from the geothermal power plant in the background with
2 people swimming in this big pool.

3 Q. Okay. And the client was in the Netherlands, so
4 this is a --

5 A. Yeah; yeah.

6 Q. -- double-page spread of a publication in the
7 Netherlands?

8 A. Right.

9 Q. What -- what was the publication?

10 A. Well, like I say, I -- I think it was probably in
11 their biggest newspaper.

12 Q. Okay.

13 A. Let me see. Oh, yeah. It says -- it says, back
14 on the second page, back in the -- back in the license --
15 it -- it was -- it was published in NRC Handelsblad, which
16 is a national newspaper in Holland.

17 Q. Okay. Next is March 3rd, 2006, Bridgett Noizeux,
18 Denver International Airport at twilight. What was this
19 for, Architecture and Airports?

20 A. GEO France, magazine.

21 Q. GEO France?

22 A. Yeah. GEO is a publication somewhat equivalent to
23 National Geographic, and they have a French edition and a
24 German edition.

25 ~~Q. Okay. Next is Bonnie Carheden for Karsh & Hagan,~~

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1 July 30th, 2020, Unlimited trade publication advertising for
2 one year. What's Karsh & Hagan?

3 A. Advertising agency.

4 Q. So they're the representative of the user of this
5 photograph?

6 A. Correct.

7 Q. And the user is?

8 A. Visit Denver.

9 Q. Visit -- excuse me?

10 A. Visit Denver.

11 Q. Which is a publication of the chamber of commerce
12 or something like that?

13 A. No. Visit Denver. It's like what -- it's like
14 Visit Albuquerque.

15 Q. The --

16 A. They don't call themselves the Albuquerque CB -- B
17 anymore. Most of them say, "Visit Albuquerque," "Visit
18 Denver," whatever.

19 Q. Sold at newsstands?

20 A. No. Well, this was -- this was for an ad in trade
21 publications.

22 Q. Oh, okay. So the ad could be used in different
23 media?

24 A. No.

25 Q. Different trade publications?

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1 A. Well, yeah. I mean, they -- they -- they licensed
2 it for unlimited trade publication use for one year, and
3 generally, they give me an idea what that is. I mean, it
4 doesn't say so here, but, like, they probably used it two
5 or -- pardon me -- two or three times, and trade
6 publications are very specific and -- and are not large
7 circulation.

8 Q. The next is August 25th, 2016, to Kate Moore,
9 \$10,000. What was --

10 A. There were two to Karsh & Hagan here.

11 Q. Oh.

12 A. One after the other.

13 Q. I missed --

14 A. And -- and just relicensing. So one was 2018 and
15 one was 2020.

16 Q. I see. So is the 2018 the same image?

17 A. Just a minute. I'm sure it is, but let me just
18 look. Yeah. You can -- you can see it where the license
19 terms are, at the top line. That's -- when it says,
20 "20140802_yoga_137," that's the exact image that was used,
21 and that's the subject matter, Yoga on the Rocks.

22 Q. I see. Okay. So the next is Kate Moore, Art
23 Producer, August 25th, 2016, for \$10,000. What was this
24 for?

25 A. This was for use by -- pardon me -- Royal

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1 Caribbean for -- for various uses, and they had used the
2 image previously, licensed it through Corbis when Corbis
3 still existed, before the Corbis collection was rolled over
4 into Getty. So when -- when Corbis closed down, they
5 approached me directly to relicense.

6 Q. Oh, so the original license was through Corbis,
7 and then the subsequent 2020 --

8 A. For a different period of time, yeah.

9 Q. Okay.

10 A. And I think it was around the similar amount too.

11 Q. The next is to Erika Santucci, February 28th,
12 2007, \$1,500, Burma. Did you go to Burma to take this
13 photograph?

14 A. No, I didn't.

15 Q. Tell me about the photograph.

16 A. In times past, because -- and I'm not sure if
17 you're aware, but Nikon is not in very good condition any
18 longer. They're -- they slipped from being one of the top
19 two. Now Canon and Sony are -- are the top, but at any
20 rate --

21 Q. Are we talking about Canon and Sony --

22 A. Cam- -- like digital single-lens reflex cameras.

23 Q. So what's the top now?

24 A. Well, I think Canon is, probably.

25 Q. Okay.

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1 A. At any rate, back in better times, Nikon was a
2 pretty solid client of mine, using my images for all kinds
3 of things. I had several covers of their magazine that
4 is -- went defunct, eventually. They used many pictures for
5 trade shows. This particular use was just for the right to
6 display the print in their U.S. headquarters. I had
7 pictures on their website. That -- that has kind of gone by
8 the wayside as -- as -- as their fortunes have changed. I
9 will -- I will add as well that, previously, they did a lot
10 of print material, and then -- and that all disappeared.

11 Q. But at the time, in 2007, Nikon was Nikon. It was
12 a preeminent camera manufacturer, yes?

13 A. Correct.

14 Q. And the next is October 23rd, 2012, Barbara
15 Heineman -- also Nikon, another Nikon. 2012 is a little
16 later, five years hence.

17 A. Right. Well, I would say -- yeah. For a number
18 of years, they were a -- a good client of mine.

19 Q. And this was for what use?

20 A. Print as well.

21 Q. When you say "print," what -- for what use was the
22 print to be made, do you know?

23 A. Well, on the line above, where it says, "License
24 expired," it says, "Trade show graphics." So there are --
25 ~~there are two or three big shows annually that Nikon would~~

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1 have a booth, and then they would have booth graphics,
2 prints, and so on.

3 Q. You don't suppose the fact that you took these
4 pictures for Nikon was the central factor that caused the
5 diminution of the quality of Nikon cameras, do you?

6 A. I hope -- hopefully not. I did my best for them.

7 Q. The next is Savannah Chen, July 1st, 2020, \$6,430
8 fee. For what?

9 A. They were allowed to have this on their website
10 and distribute it to tour companies publicizing New Zealand,
11 and as a matter of fact, a couple days ago -- they've --
12 they've continued to license it regularly. A couple -- a
13 couple of days ago, they just licensed it again.

14 Q. Same terms?

15 A. Well, no, not necessarily. I mean, I -- I think
16 that sometimes the years change. They had -- they had asked
17 about getting more usage for higher -- much higher prices,
18 and they opted to continue with similar terms to this.

19 Q. Okay. Next is to Chris Ferguson at AAA Living,
20 July 30th, 2013. This is for an editorial magazine article.
21 I assume that it was for a photograph to a company, the
22 article; is that right?

23 A. Yes.

24 Q. \$1,250.

25 A. For the cover.

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1 Q. For the cover? 2.5 million press run?

2 A. Uh-huh.

3 Q. Okay. Next is Jeff Campagna, C-A-M-P-A-G-N-A,
4 November 13th, 2007, Camel with Taj Mahal, \$1,400. Did you
5 take that photo?

6 A. Yes.

7 Q. At the Taj Mahal?

8 A. Yes.

9 Q. Okay. And did -- when they used it, originally,
10 was it just a stock image, or did they commission you to go
11 to the Taj Mahal?

12 A. No. It was a stock image.

13 Q. Okay. But this is -- this is a continuation of a
14 previous license? Yes? No? It says, "This license expired
15 on 11-13-2008 or as described below." What does that mean?

16 A. Well, it -- it -- in that case -- I mean, it was
17 for -- it -- it was for use on one month's cover, but -- you
18 know, I have a place in my software where I can put in a
19 license, and -- and it appears that -- that I gave them the
20 license for one year, although that's not how they used it.
21 They used it for one month.

22 Q. The next is Zaina, Z-A-I-N-A, Razzaq, R-A-Z-Z-A-Q.

23 A. I think you missed one.

24 Q. Excuse me?

25 A. ~~There was one -- The Teaching Company, I have~~

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1 here.

2 Q. Maybe I missed one. Oh, you're right. Sorry.

3 Let's go back. Matthew Mayer, January 27th, 2009, Spring --

4 2009 Spring outside wave 3-B_Smithsonian cover test,

5 whatever that -- what does that mean?

6 A. I don't know.

7 Q. Okay. Was it for a cover of Smithsonian magazine?

8 A. I don't know. I mean, I know what The Teaching

9 Company was. I -- I -- I -- I -- I can't recollect what
10 happened.

11 Q. The Great Wall of China, is that a picture you
12 took?

13 A. Yes.

14 Q. This was just a stock image, though, right?

15 A. Yes.

16 Q. Okay.

17 A. Yeah. I mean, all of these that are identified,
18 up here, "Stock Photography Invoice" --

19 Q. Yeah. Yeah, yeah. Yeah. I see.

20 A. So they are stock.

21 Q. And the next -- and the last of this group -- is
22 Zaina Razzaq, September 26th, 2013, Photo use/New Zealand
23 Story Tool Kit. What's that?

24 A. Again, it was some kind of library that they had
25 where tour companies could access it.

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1 Q. Okay.

2 A. So these -- all this that we went through already,
3 the examples that were given as -- for -- for the -- for the
4 four -- the four people, the -- you're done with these,
5 right --

6 Q. Yes. Well, yes --

7 A. -- or no?

8 Q. -- but not with all the rest of them. Yeah, I'm
9 done with that part of it. Just -- there are some pages
10 after the licenses.

11 A. Well, was -- were these -- were these invoices
12 part of that? My invoices?

13 Q. Invoices/licenses, I think of them as -- yes, but
14 they were --

15 A. They were a part of this thing?

16 Q. Yes, and then there's --

17 A. And then there's more?

18 Q. Continue on --

19 A. That's what you were saying.

20 Q. -- with your stock agency --

21 A. Right. Right, right.

22 Q. So if we can continue on with --

23 A. Okay.

24 Q. -- the stock agency -- these are your

25 ~~arrangements -- your contracts with two stock agencies, I~~

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1 think Alamy and --

2 A. And Getty.

3 Q. -- Getty. And the arrangements with them is that
4 they have a portfolio -- or access to your portfolio and
5 they license the images under -- pursuant to their
6 agreements with you, and they keep a percentage, and you
7 keep -- and then they remit to you that which is your share;
8 is that right?

9 A. Correct.

10 Q. Okay. But you don't use them anymore?

11 A. No.

12 Q. And you stopped when?

13 A. I don't recall. I mean, it's been I think
14 probably about two years ago.

15 Q. Too expensive?

16 A. What was?

17 Q. Was it too expensive to use them?

18 A. Too expensive to use them?

19 Q. Yes.

20 A. As I said, I mean, the -- the kind of relationship
21 between photographers and photo agencies has evolved greatly
22 in recent years, and -- because I -- I -- I was in stock
23 agencies starting in 1980. So at that point, photographers
24 were more well respected, and it was considered more of a
25 partnership deal. That's no longer true, you know.

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1 Q. Life.

2 A. They don't -- they don't -- they don't -- they
3 don't treat us like partners; I'll say that. That had
4 something to do with me not continuing.

5 Q. Next is 32, documents, other than those responsive
6 to the preceding Request No. 31, evidencing any action you
7 took to prevent any website or host from using, reproducing,
8 or displaying any photograph. And it says here, "Documents
9 responsive to this request are being produced." And what I
10 want to know is, what do these documents that you've
11 produced show that is responsive to these requests -- to
12 this request, documents evidencing action you took to
13 prevent any website or host from using, reproducing, or
14 displaying? And this is what -- it's after all these
15 licenses or invoices. How do these images --

16 A. Well, for one thing -- and I think it's very hard
17 to see -- you can see that, as I stated before, at the
18 bottom of every page on my website is a disclaimer about the
19 fact that I take infringement seriously and -- and --

20 Q. I see.

21 A. -- if you're discovered -- I -- I -- I'm -- I
22 don't have the thing in front of me, but, you know -- you
23 know, if you're discovered to -- to have infringed, you will
24 be contacted and you may be sued in federal court.

25 Q. Other than what you've just described, which I

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1 don't think that's responsive, but what I think is
2 unimportant here --

3 A. And --

4 Q. Do you --

5 A. As well, like I said, it's shown where the ability
6 to -- to copy off my website is disabled.

7 Q. Yeah, but did you take -- have you taken any
8 affirmative action other than these -- type of labeling
9 something at the outset to prevent websites or hosts from
10 using, reproducing?

11 A. You know, as I stated previously, the -- the web
12 is a -- is a huge monstrosity, if you will, and without
13 becoming my full-time job, there are limits to what I can do
14 to protect myself.

15 Q. So the answer to the question I asked is no? Is
16 that fair to say?

17 A. Say it again, please.

18 MR. SQUIRES: Would you read back the question.

19 (Record read as requested.)

20 A. Yeah. So I think the answer is probably no.

21 Q. (BY MR. SQUIRES) Okay. I'm done with this batch,
22 and now, it seems to me, would be a good time to take a
23 break for --

24 A. Okay.

25 Q. -- lunch, if that's suitable.

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1 THE VIDEOGRAPHER: We're now going off the record.
2 The time is approximately 12:52 p.m. Watch your microphone
3 when you stand up, please.

4 (Lunch recess taken.)

5 THE VIDEOGRAPHER: We're now going back on the
6 record. The time is approximately 1:43 p.m.

7 Q. (BY MR. SQUIRES) Mr. Harrington, do you have a
8 contingent fee relationship with your lawyer in these
9 matters?

10 A. Yes.

11 Q. Who bears the out-of-pocket expenses in your
12 relationship with respect to any cases that are brought?

13 A. I do.

14 Q. Can you tell me, have there been any cases, of all
15 of the cases that you have brought, in which the defendants
16 that you have alleged to have infringed your photographs
17 have admitted that they took the photographs from your
18 website?

19 A. I don't know.

20 Q. Is it not the case that the defendants who you
21 have brought actions against have asserted that they found
22 the photograph, whatever that was, on a website that did not
23 identify you as the owner or copyright proprietor?

24 A. Well, from what I understand --

25 MR. DeSOUZA: Jeff --

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1 Well, hold -- hold on.

2 Object to form.

3 Jeff, are you asking generally, like all lawsuits
4 he's brought or all claims he's brought, or just here?

5 MR. SQUIRES: All -- all the infringement claims
6 that he has brought.

7 MR. DeSOUZA: But -- but not -- not limited to
8 this --

9 MR. SQUIRES: Not limited --

10 MR. DeSOUZA: -- lawsuit?

11 MR. SQUIRES: Not limited to this case.

12 MR. DeSOUZA: All right. Thank you.

13 THE WITNESS: I'm sorry. Ask me again, please,
14 sir.

15 MR. SQUIRES: Want to read back?

16 (Record read as requested.)

17 A. I don't know.

18 Q. (BY MR. SQUIRES) Are you aware of what the
19 defendants in the cases that you have brought say about --

20 A. Well, they're --

21 Q. -- where they found --

22 A. No, not -- not generally.

23 Q. Do you not pay attention?

24 A. Well, I'm not necessarily privy to it, to that
25 information.

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1 Q. Why not?

2 A. Well, because I haven't heard it said.

3 Q. Do your lawyers not talk with you about these
4 sorts of things?

5 A. I -- I can't recall conversations about that.

6 Q. So is it fair to say that you have no knowledge of
7 where any of the subjects of your accusations and lawsuits
8 of copyright infringement have found photographs?

9 A. No.

10 MR. DeSOUZA: Object to form.

11 A. I mean, you're talking very generally about many
12 cases.

13 Q. (BY MR. SQUIRES) Is it not true that you have no
14 knowledge of where --

15 MR. DeSOUZA: Object --

16 Q. (BY MR. SQUIRES) -- defendants in any of the
17 cases that you have brought for copyright infringement found
18 the photographs that were the subject of your claims?

19 MR. DeSOUZA: Object to form.

20 A. No.

21 Q. (BY MR. SQUIRES) It is -- to say no, that means
22 it is -- I think you are mishearing my question, and I think
23 you are answering contrary to what you -- the question calls
24 for, so I'm going to say it again. It is true, is it not,
25 that you have no knowledge of where the defendants in the

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1 cases --

2 A. Yes.

3 Q. -- you have brought found the photographs that
4 they -- that you allege they infringed?

5 A. Yes.

6 MR. DeSOUZA: Object to form.

7 Q. (BY MR. SQUIRES) What knowledge do you have of
8 where defendants in cases you have brought alleging
9 infringement -- strike that.

10 What knowledge do you have of where defendants you
11 have accused of infringement found the allegedly infringing
12 photographs?

13 MR. DeSOUZA: Object to form.

14 A. I do not have knowledge.

15 Q. (BY MR. SQUIRES) Okay. I'm going to put a series
16 of -- well, it will be easier if I do this. I'm going to
17 show you a document --

18 THE WITNESS: Bless you.

19 THE VIDEOGRAPHER: Excuse me.

20 Q. (BY MR. SQUIRES) Mark this Exhibit Next. This is
21 a letter dated January 6th, 2022, from CopyCat Legal to
22 360 ABQ, LLC. Do you know what 362 -- 360 ABQ, LLC, is?

23 (Exhibit 14 marked.)

24 A. Yes.

25 Q. Okay. Did you review this letter before it was

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1 sent?

2 A. Yes.

3 Q. It is essentially the same -- the same form letter
4 that CopyCat Legal has sent to all the defendants in the
5 present case --

6 A. Yes.

7 Q. -- correct? And is it also the same form letter
8 that CopyCat Legal sends to all defendants that you have
9 accused of infringement since you engaged that firm?

10 A. I -- I believe so, more or less.

11 Q. On page 2, in the first full paragraph on that
12 page -- it's a very short paragraph -- it says, "The
13 unauthorized use of our client's work deprives him," meaning
14 you, Mr. Harrington, "of much-needed income." What are your
15 financial circumstances that you are in great need of such
16 income?

17 A. I'm not really sure I follow what you're saying.
18 I mean, if -- if -- if -- as I explained already, being a
19 photographer for 45 years has never been an easy business,
20 and this is long before I ever found out about copyright
21 infringements, which, as I told you, were -- are primarily a
22 result of -- of the web. So, for example, as -- because as
23 the business has become tougher and as many things that were
24 more well paid in the past have disappeared, that income has
25 been reduced substantially, at the same time that, as I

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1 pointed out, thousands of people use my picture without
2 paying anything, so -- yeah. I think that's a fair thing
3 to -- fair thing to say.

4 Q. What was your earned income in 2021?

5 A. I don't recall, offhand.

6 Q. What was your earned income in 2020?

7 A. I don't recall.

8 Q. What was your earned income in 2019?

9 A. Same.

10 Q. What was your earned income in 2018?

11 A. Same answer.

12 Q. Can you give me an approximate answer to that
13 question for each of those years, starting with 2018?

14 A. No, not without, you know, searching for
15 information. Off the top of my head, I can't tell you.

16 Q. Did you file federal income tax years -- returns
17 for each of those years?

18 A. Yes.

19 Q. And they would reveal that information, correct?

20 A. The government would reveal it?

21 Q. Your tax returns.

22 A. I'm sorry. Just -- just a moment.

23 Q. Your tax returns would reveal -- would reveal that
24 information?

25 A. Yes.

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1 Q. Okay. It also says on that page, somewhere, that
2 you have been forced to incur substantial costs in
3 identifying violators and enforcing your rights. Can you
4 tell me what the amount of and type of costs you've incurred
5 for each of the years 2018 through 2021 to identify
6 violations --

7 A. Well --

8 Q. -- and enforce your rights?

9 A. -- I would -- I would say as the use of my time.
10 It has taken time away from my other work.

11 Q. Okay. That's one thing. What else?

12 A. Well, primarily, I'm -- I'm the one who is
13 identifying them, so that's what it would be, you know.

14 Q. Anything else?

15 A. Not off the top of my head.

16 Q. Okay. Next, I'm going to ask you to look at a
17 copy of the Complaint you filed against 360 ABQ. I'm going
18 to have that marked as the next --

19 (Exhibit 15 marked.)

20 MR. DeSOUZA: Jeff, did you say this was the
21 Complaint in 360 ABQ?

22 MR. SQUIRES: Yes, I said that.

23 Q. (BY MR. SQUIRES) Paragraph 9 on page 3 refers to
24 the photograph that's the subject of that Complaint. Has
25 anyone ever licensed that work?

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1 A. I don't know.

2 Q. How would you determine that?

3 A. I could search by the file number.

4 Q. Okay. Paragraph 19 says that the -- you have been
5 unable to negotiate a reasonable license -- "for the past
6 infringement of his work." What would be a reasonable
7 license?

8 A. I don't know in this case, without reviewing
9 further.

10 Q. Do you know what communications have taken place
11 between your counsel and 360 ABQ's counsel concerning a
12 resolution of that case?

13 A. Well, as you know, there are a number of cases,
14 and -- you know, without looking into it further, I don't
15 remember.

16 Q. Okay. When you say "a number of cases," you're
17 referring to all the Complaints that you have brought
18 against alleged infringers, correct?

19 A. Yes.

20 Q. Do you know what use was made by 360 ABQ of the
21 photograph in question?

22 A. Well, I believe it was web use. As I said,
23 without looking into the facts of it further, I don't know.

24 Q. Okay. And in section -- in paragraph 26 of your
25 Complaint, you allege that the infringement was willful as

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1 it acted with actual knowledge or reckless disregard for
2 whether its conduct infringed the copyright, but you have no
3 knowledge of what facts might support such a contention; is
4 that true?

5 A. Correct, except my assumption is because they
6 are --

7 Q. I'm not asking for your assumption.

8 A. All right.

9 Q. Next, I'm going to show you a document marked as
10 Exhibit No. Next that is 360 ABQ's answer and counterclaims
11 in this matter -- in that matter. And I'd ask you, do you
12 know what the Defendant 360 ABQ asserted about your claim of
13 infringement and demand for payment?

14 (Exhibit 16 marked.)

15 A. Again, this is a document that I've seen in the
16 past, but without reviewing it further, I -- I have no
17 further comment.

18 Q. Did you review it with care at the time you --

19 A. Well, I --

20 Q. -- saw it?

21 A. -- believe so, but --

22 Q. Did you discuss it with your attorney?

23 A. I -- I assume so, yes.

24 Q. Assume. I'm asking you if you recall. Do you
25 specifically recall discussing --

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1 A. No, I don't specifically recall.

2 Q. And next I'm going to show you a document marked
3 as Exhibit No. Next.

4 (Exhibit 17 marked.)

5 A. Is that ring of yours Greek?

6 Q. Well, it's -- it is Greek key design.

7 A. Yeah. Sorry. Unrelated.

8 Q. And I ask you if you were provided a copy of this
9 to review before it was --

10 A. Yes.

11 Q. -- served?

12 MR. DeSOUZA: Jeff, can you tell me what this
13 exhibit is?

14 MR. SQUIRES: Sorry. Plaintiff's Answer to
15 Counterclaim.

16 MR. DeSOUZA: In 360 ABQ?

17 MR. SQUIRES: Yes. All the documents --

18 MR. DeSOUZA: Thank you.

19 MR. SQUIRES: -- that I am discussing now, until I
20 change course here, are 360 ABQ action.

21 MR. DeSOUZA: Thank you; thank you.

22 Q. (BY MR. SQUIRES) And in your Answer, paragraph
23 No. 6, which is a response to paragraph 6 of Defendant
24 360 ABQ's counterclaims -- I'm going to refer you to the

25 ~~counterclaim allegation that the letter sent to 360 -- which~~

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1 you just saw the demand letter -- "is identical in form to
2 form letters Mr. Harrington has sent to numerous targets of
3 his scheme, sweep [sic]" -- "excepting only that the
4 particular photographs such others were alleged to have
5 infringed were different. On information and belief, each
6 case the photographs in question had been found by the
7 targeted party on a website that provided no information or
8 indication that the photograph had been taken by, or the
9 copyright was owned by, Mr. Harrington," and it -- that's
10 only part of the -- paragraph 6. But in response, you say
11 you are without knowledge or information sufficient to admit
12 or deny those allegations concerning methods by which
13 infringers searched for and ultimately infringed plaintiff's
14 photography. That's still the case, correct, you have no
15 knowledge about the methods by which infringers -- alleged
16 infringers searched for and ultimately, allegedly, infringed
17 your photography?

18 A. I'm not sure what your question is.

19 Q. You have no knowledge of the methods --

20 A. No.

21 Q. -- employed by --

22 A. No.

23 Q. -- the defendants in -- in any of these cases?

24 A. Correct.

25 Q. Okay. The next document I'm going to show you is

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1 your response to the Defendant 360 ABQ's first request for
2 production of documents, and it will be marked as -- in
3 connection with that, I am going to show you two
4 photographs -- two images perhaps of the same photograph,
5 marked as Exhibit No. Next. And these are identified as
6 being responsive to Request for Production No. 7. Number 7
7 says, "Document" -- it asks for documents evidencing actual
8 damages you've suffered as a result of 360 ABQ, LLC's,
9 alleged infringement. And the response from your attorney
10 correctly [sic] -- your attorney prepared these
11 responses? --

12 (Exhibit 18 marked.)

13 (Exhibit 19 marked)

14 A. Yes.

15 Q. -- is, "The documents responsive to this request
16 are being produced," and what I just handed you --

17 MR. SQUIRES: As Exhibit No. 18?

18 (Court reporter response.)

19 Q. (BY MR. SQUIRES) -- 19, excuse me, 19 -- are the
20 two documents identified as being responsive to that
21 request. And what I want to know is how do these documents
22 evidence actual damages you have suffered?

23 A. I don't know.

24 Q. Okay.

25 ~~MR. DeSOUZA: Jeff, did you say "Request for~~

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1 Production No. 7"?

2 MR. SQUIRES: Yes.

3 MR. DeSOUZA: I think Request for Production No. 7
4 in 360 ABQ was all of those same invoices and licenses we
5 covered for this case.

6 MR. SQUIRES: I'm sorry.

7 MR. DeSOUZA: At least that's what's -- that's
8 what's --

9 MR. SQUIRES: I --

10 MR. DeSOUZA: -- in the folder --

11 MR. SQUIRES: I --

12 MR. DeSOUZA: -- in My Documents.

13 MR. SQUIRES: I apologize. You are right. This
14 was Request for Production No. 4.

15 Q. (BY MR. SQUIRES) And 4 reads, "Documents
16 supporting your allegations that 360 ABQ willfully" --
17 alleged the infringement of your copyright in the subject
18 photograph.

19 MR. SQUIRES: My mistake. Thank you, Dan.

20 Q. (BY MR. SQUIRES) How do these two photographs
21 support the contention that Defendant 360 ABQ acted
22 willfully?

23 A. I don't know.

24 Q. Next --

25 ~~THE WITNESS: I assume they can shred these after?~~

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1 (Court reporter response.)

2 MR. SQUIRES: Exhibit No. 20?

3 (Exhibit 20 marked.)

4 (Court reporter response.)

5 Q. (BY MR. SQUIRES) Now, I'm willing to accept your
6 client's -- your attorney's submission and forego asking
7 questions about these if he will confirm, as I believe to be
8 the case, that these are identical to the invoices for
9 licenses that were produced in response to the Harrington,
10 plaintiff's, request for production, which we've reviewed
11 previously.

12 MR. DeSOUZA: Jeff, are you -- you haven't
13 announced what Exhibit 20 is. If it's the -- if it's the
14 same invoices that we just looked at, that were produced --
15 I -- I guess if what you have is the document production for
16 Request No. 7 in 360 ABQ --

17 MR. SQUIRES: Yes.

18 MR. DeSOUZA: Then yes. Then yes, I agree. Those
19 are the same invoices that were produced in the Adler
20 Medical case, that we've already covered.

21 MR. SQUIRES: Okay. Good enough. Good enough for
22 me.

23 THE WITNESS: Can we ask them if they have more
24 coffee? The -- the bit I had before was the end of the pot.

25 (Court reporter response.)

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1 THE WITNESS: I -- this is my low-ebb part of the
2 day.

3 (Court reporter response.)

4 THE WITNESS: Either way. It doesn't matter.

5 Q. (BY MR. SQUIRES) Let's continue for a few
6 minutes, and then --

7 A. Sure.

8 Q. Then I'd ask you to look at Request No. 10, and
9 your response to the request for production of documents
10 that I believe was marked as -- as Exhibit 19 [sic].

11 A. What does it start with?

12 Q. Plaintiff's responses, written responses, to
13 defendant's request for production of documents on the
14 360 ABQ caption.

15 THE WITNESS: Do you have it there?

16 (Court reporter response.)

17 Q. (BY MR. SQUIRES) 18.

18 THE WITNESS: Can I see the front, please?

19 (Court reporter response.)

20 A. Yeah. Okay.

21 Q. (BY MR. SQUIRES) Number 10, "Documents" -- it
22 calls for "Documents you have sent to any person, including
23 but not limited to DMCA takedown notices ... by which you
24 sought removal of any photographs you have created from any
25 website." And in response to that, it says, "See response

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1 to Request No. 1." Request No. 1, the response is --
2 Objection. It cites a case, sets an argument. My question
3 is, do you have any such documents that you've sent to any
4 person, including DMCA takedown notices, by which you sought
5 removal of any photograph from a website? Any -- any
6 documents?

7 A. Yeah. And the -- several I mentioned earlier,
8 that were -- were nonprofits, I would have emails about
9 that. As I said, in terms of DMCA takedowns, I don't think
10 I have any, although I've -- as I said, I -- I may have
11 filed a few in the past.

12 Q. You may have or you know you did?

13 A. I know I did, but in terms of when or how many, I
14 don't remember.

15 Q. How long ago would it have been?

16 A. I don't know. Like I just said, I don't remember
17 exactly when it would --

18 Q. Well, would you remember if it were yesterday?

19 A. Yes, I would.

20 Q. Would you remember if it was last month?

21 A. It wasn't last month; it wasn't this year.

22 Q. Was it the year prior to this year?

23 A. I doubt it, but I'm guessing.

24 Q. How long ago would you --

25 A. I don't know; I don't know.

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1 Q. You have no idea?

2 A. No.

3 Q. Would it have been within the last three years?

4 A. I don't know.

5 Q. Okay. Could it have been within the last five
6 years?

7 A. I imagine so, because most of my activity
8 regarding copyright infringements has been in that period of
9 time.

10 Q. And you wouldn't consider that to be a
11 sufficiently important record to keep?

12 A. No. As I -- as I said -- I mean, you know, like,
13 look. The world is full of paper. Do I keep all that
14 stuff? No, I don't. My primary job is not takedown
15 notices; otherwise, I would have done hundreds -- hundreds
16 of them. I've done a few, and I don't have any -- you know,
17 it's like the email you keep. I've -- I've -- you know,
18 this deep in it. I'm running a business. I have other
19 things that take my time -- take my attention. Sorry.

20 Q. Has the issue of takedown notices been raised in
21 any of the other lawsuits in which you accused alleged
22 infringers of infringing your copyrights?

23 A. No.

24 MR. SQUIRES: You want to go check on the coffee
25 now?

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1 (Court reporter response.)

2 MR. SQUIRES: Take a very short break to check on
3 coffee?

4 (Court reporter response.)

5 THE VIDEOGRAPHER: We're now going off the record.
6 The time is approximately 2:23 -- watch your microphones
7 when you stand up, please -- p.m., 2:23 p.m.

8 (Brief recess taken.)

9 Q. (BY MR. SQUIRES) I'm going to show you what I
10 have -- will have marked as Exhibit --

11 MR. SQUIRES: Maybe 21?

12 (Exhibit 21 marked.)

13 (Court reporter response.)

14 A. Aha.

15 Q. (BY MR. SQUIRES) Fond memories.

16 A. Not exactly.

17 Q. This is a letter --

18 THE VIDEOGRAPHER: We're not on the record were
19 we?

20 MR. SQUIRES: Oh, we're not?

21 THE VIDEOGRAPHER: I don't believe so.

22 MR. SQUIRES: My goodness. I could have gone on a
23 tangent.

24 (Court reporter response.)

25 ~~THE VIDEOGRAPHER: We're now going on -- back on~~

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1 the record. The time is approximately 2:25 p.m.

2 Q. (BY MR. SQUIRES) Mr. Harrington, I've offered you
3 a document that is a letter from David Deal addressed to
4 Mountain States Agency, LLC, dated December 30th, 2019, as
5 Exhibit --

6 MR. SQUIRES: 21?

7 (Court reporter response.)

8 Q. (BY MR. SQUIRES) Exhibit 21. And I ask you if
9 you've seen this letter before.

10 A. Yes.

11 Q. Do you recall under what circumstances you saw
12 this letter?

13 A. I'm not sure what you -- what your question is.

14 Q. When did you see this letter?

15 A. I -- I don't remember.

16 Q. David Deal formerly represented you in copyright
17 infringement litigation, correct?

18 A. Correct.

19 Q. Over what period of time did he represent you?

20 A. I can't tell you exactly. My guess would be about
21 three years.

22 Q. Okay. And was he your lawyer immediately previous
23 to CopyCat Legal?

24 A. Yes.

25 Q. Okay. Did you always review letters that Mr. Deal

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1 sent out to alleged infringers before he sent them?

2 A. Not necessarily.

3 Q. But you remember reviewing this letter?

4 A. I believe so; but, frankly, one of the many
5 problems I had dealing with David Deal was that he was not
6 very organized. He was also not very forthcoming on things,
7 and he made decisions without consulting me.

8 Q. Was Mr. Deal's practice to send out letters that
9 were of a form basis, in the sense that essentially he would
10 send out the same letters to alleged infringers, changing
11 only certain details?

12 A. Yeah, I believe so.

13 Q. In this December 30th, 2019, letter, Mr. Deal
14 demanded that Mountain States tender \$6,000 to him. Did
15 Mr. Deal discuss that amount with you before he sent the
16 letter?

17 A. I don't believe so.

18 Q. Do you know why \$6,000 was selected?

19 A. No.

20 Q. But he was your lawyer and he spoke for you,
21 correctly -- correct?

22 A. Yes; correct.

23 Q. Okay. I'm going to show you a document that's now
24 marked as Exhibit 20 Something.

25 (Exhibit 22 marked.)

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1 (Court reporter response.)

2 A. Did they say they were going to bring the coffee?

3 Q. Yes, they did. This was a Verified Complaint that
4 was filed by Mountain States Agency against you. Do you
5 recall that?

6 A. At the time, essentially, I was not in the loop.

7 Q. So are you saying you were never made aware of
8 this Complaint being filed against you?

9 A. Yeah. I believe that's correct.

10 Q. Did you ever find out about it?

11 A. After the fact, and not very clearly from him. I
12 understand it more today from hearing more about it, but --
13 I was never asked and I was not in agreement with this --
14 whatever settlement came about from it that basically
15 included, I think, attorney's fees that you collected.

16 Q. Well, I'm always happy to collect attorney's fees,
17 Mr. Harrington, but --

18 MR. SQUIRES: Do you have this?

19 (Court reporter response.)

20 Q. (BY MR. SQUIRES) I'm going to show you a
21 document --

22 A. Are you done with that document?

23 Q. Yes. I think so. Yes. The document marked as
24 Next is the Answer and Counterclaims filed by you in

25 ~~response to the Mountain States Agency Complaint. Have you~~

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1 ever seen that?

2 (Exhibit 23 marked.)

3 A. I believe I have, but I can't say at what point.

4 Q. In your answer in that case to the counterclaim --
5 to the Complaint -- sorry -- you state that, "Defendant,"
6 that's you, "does not conduct business in New Mexico or have
7 the required minimum" -- "requisite minimum contacts." Do
8 you see that?

9 A. No. Where?

10 Q. No. 5.

11 A. I'll look.

12 . (Court reporter clarification requested.)

13 MR. DeSOUZA: I think -- I think it's my
14 computer's internet connection. It just killed the video,
15 because it got unstable for some reason.

16 A. Okay.

17 Q. (BY MR. SQUIRES) Do you believe that to be the
18 case?

19 A. Yes.

20 Q. Why did you not raise that in the current case?

21 A. I'm sorry?

22 Q. Why did you not raise that issue in the present
23 case?

24 A. I don't know.

25 Q. In your answer to No. 10 in that case --

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1 MR. DeSOUZA: Jeff -- Jeff, I apologize. I didn't
2 catch the prior one. It looks like your internet is bad
3 now. I -- I heard -- I heard, "Why did you not raise that
4 in the prior case?" And then it froze, and I didn't hear
5 anything beyond that.

6 MR. SQUIRES: Oh. This is in -- we're dealing
7 with the Harrington Answer and Counterclaims in the
8 Mountain States Agency case.

9 MR. DeSOUZA: Right; right. No. I -- I heard --
10 I heard the question about --

11 MR. SQUIRES: Okay.

12 MR. DeSOUZA: -- why did he not raise personal
13 jurisdiction in this case, and then it froze. I didn't hear
14 the answer to the question or not.

15 MR. SQUIRES: I think he said he doesn't know.

16 MR. DeSOUZA: Okay.

17 Q. (BY MR. SQUIRES) Is that --

18 A. I -- I'm not sure.

19 Q. I'm -- I'm -- I'm repeating what you said in
20 response to that question, and did you not say, "I don't
21 know"?

22 A. What was the question again?

23 MR. SQUIRES: Let the court reporter read back the
24 question and your answer.

25 (Record read as requested.)

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1 MR. SQUIRES: You got it, Dan?

2 MR. DeSOUZA: Yeah. Now I hear you.

3 Q. (BY MR. SQUIRES) In paragraph No. 10 of your
4 Answer, you state, "On information" -- that you, on
5 information and belief, assert that plaintiff used a
6 screenshot of the photograph in question obtained from
7 defendant's, that's your, website.

8 A. Yes.

9 Q. What's the information and belief on which you
10 base that statement?

11 A. I don't know. Do you need to go off the record?
12 I'm just going to go over there and grab some coffee, or
13 I'll just be right back.

14 Q. We can continue, and I'll --

15 A. Okay.

16 Q. Mr. Harrington, I'm going to refer -- take your
17 time. I'm not rushing you -- that in your Answer, you raise
18 certain affirmative defenses. The affirmative defenses
19 begin on the bottom of the third page, and on the top of the
20 fourth page, there is a second affirmative defense, unclean
21 hands. Do you see that?

22 A. Yes.

23 Q. It says that, "Upon information and belief,
24 plaintiff's goal" -- plaintiff was Mountain States Agency --
25 ~~"is not the adjudication on the merits, but to use the~~

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1 federal court system to smear defendant." What was the
2 information and belief on the basis of which you so stated?

3 A. Well, again, I didn't write it. And I wasn't
4 really privy to it, but I would -- I would assume it was
5 some of the -- some of the claims that were made, and --
6 and --

7 Q. I'm not asking for you to assume anything. I'd
8 like to know what you know.

9 A. Well, again -- I didn't write it. I don't know.

10 Q. Okay. There were also counterclaims asserted in
11 this document, and I'd refer you to Counterclaim --
12 paragraph 18, which is at the top of page 8, and it says
13 that, "Harrington asserts that Mountain States ... knowingly
14 and with the intent to conceal infringement, intentionally
15 removed the copyright management information from
16 Harrington's copyrighted photograph." What factual basis
17 was there for that statement to be made?

18 A. Well, again, this -- this -- that -- that
19 paragraph was written by David Deal, and he may have been
20 privy to information that I don't know about to make that
21 claim.

22 Q. So the answer is you don't know any information to
23 support that contention; is that correct?

24 A. Correct.

25 ~~Q. I'm going to show you a document marked as Exhibit~~

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1 No. 24 I think, which are your responses and objections to
2 plaintiff's interrogatories in the Mountain States case.

3 (Exhibit 24 marked.)

4 THE WITNESS: Pretty soon they'll be calling in a
5 masseuse.

6 (Court reporter response.)

7 THE WITNESS: I can give a little yoga class.

8 Q. (BY MR. SQUIRES) Number 9 -- that's the answer --
9 asks you to identify any websites, including the hosts,
10 which you've become aware, which posted or displayed any
11 photograph you have taken without providing notice of your
12 claim of copyright ownership. In response to that, you
13 objected. "In addition to the objections set forth
14 above" -- you object on the grounds that it's
15 disproportionately burdensome and unlikely to lead to
16 information relevant to the case.

17 Now that was the Mountain States case, not this
18 case. I want to make sure I'm being clear. We don't want
19 to confuse the two, but I do want to know -- do you know of
20 any websites -- did you, at the time, know of any websites
21 that posted photographs of yours without identifying you as
22 the owner or photographer or copyright proprietor?

23 A. Well, again, in terms of -- and I answered earlier
24 something similar. In terms of specificity, I can't say.

25 ~~But in terms of just overall general knowledge, yes -- yes,~~

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1 there are many cites that contain photos of mine that are
2 doing so without licensing.

3 Q. And you cannot recall, other than some general
4 suspicion that you may have issued a takedown notice, that
5 you have ever specifically -- strike that.

6 You do not recall any specific instances in which
7 you have ever issued a takedown notice to such a website?

8 A. You said that I -- I'm sorry. Please repeat it.

9 Q. You -- you do not recall any specific instances in
10 which you have ever issued a takedown notice to the host of
11 such websites?

12 A. Well, again, as I said earlier, I do recall
13 sending several takedown notices in the past, but only a
14 relative few, and -- and in terms of when and -- when and
15 who they were, I don't remember.

16 Q. Or what photographs they were?

17 A. Or what photographs they were.

18 Q. They were concerned with?

19 A. Right.

20 Q. Okay. Next, I'm going to show you a document to
21 be marked as Exhibit 25. Now, I want to make note that
22 on -- that this consists of Plaintiff Blaine Harrington's
23 responses and objections to the first request for production
24 of documents and four exhibits attached, identified as

25 ~~MS_0001 through 0004. On the document itself, not the~~

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1 exhibits, there are some markings. They pre- -- they are my
2 markings. There are circles of some numbers of the items,
3 consisting of the request, and there are a couple of
4 instances of some words being crossed out. But everything
5 about the original document is legible, and make of this as
6 you will. I have a few questions about this document.

7 Item No. 4 -- Request No. 4 asks for documents
8 containing information on which you rely as the basis for
9 your asserted belief that Mountain States's goal in this
10 lawsuit is to smear you, and you object to that for various
11 and sundry reasons. But you have testified, I believe --
12 and I want to reiterate that -- that you -- you know of no
13 factual basis for that assertion, about the intention being
14 to smear you; is that correct?

15 (Exhibit 25 marked.)

16 A. Correct.

17 Q. Request No. 7 seeks copies of all photographs you
18 took from a hot air balloon during the photo shoot during
19 which you took the photograph that's the subject of this
20 proceeding, that proceeding being the Mountain States
21 proceeding of several years ago. That photograph was also
22 one taken during the same period of time that you were in
23 Albuquerque as the guest of something Albuquerque; is
24 that --

25 A. Yes.

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1 Q. And you did take many other photos of balloons at
2 that time, correct?

3 A. Correct.

4 Q. Okay. You objected to providing those copies of
5 other photos you took. Why?

6 A. As it stated, it's considered burdensome. You
7 know, if I took thousands, why do you need to see thousands?

8 Q. Okay. Many of the photographs you took are very
9 similar in nature; is that correct?

10 A. Well, they're of hot air balloons, but --

11 Q. They're taken during a particular time period,
12 correct?

13 A. Yeah, but I use many different lenses. Some are
14 close up. Some are wide. Some -- some show other balloons.
15 Some are single balloons. Some are taken from -- as you're
16 ascending. Some are taken from the ground. Some are taken
17 above the Rio Grande River. So, I mean, it depends on who
18 you are as to whether you're not -- whether or not you
19 consider them similar or not. They are similar in nature
20 and they are similar that they're hot air balloons, but
21 other than that, there is a lot of unique photographs.

22 Q. How long were you taking photographs -- for what
23 period of time? -- when you were photographing the Balloon
24 Fiesta?

25 A. During the entire week?

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1 Q. Yeah. How -- how long were you up in a balloon?

2 A. Well, the balloons usually go up for a couple of
3 hours at a time.

4 Q. How many times did you go up in balloons?

5 A. I can't say exactly. I'd say probably three or
6 four.

7 Q. And you don't remember how many photographs you
8 took during those time periods?

9 A. Well, I think you asked me that before, and -- and
10 it's -- it's a large number, but in terms of exactly, no, I
11 don't remember.

12 Q. And you can't approximate?

13 A. Well, no.

14 Q. Well, let's -- let's look at these licenses that
15 are attached, or whatever they are, and I will ask a few
16 questions.

17 A. Okay.

18 Q. First is identified as MS_0001. Can you tell me
19 what that is?

20 A. I'm sorry. I didn't hear you.

21 Q. Can you tell me what MS_0001 is?

22 A. Yes. What's the question?

23 Q. Can you tell me what -- what is it?

24 A. What this piece of paper is?

25 Q. Yes.

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1 A. It's a -- basically, the license -- as opposed to
2 a license on my invoice, there are some companies that
3 produce their own. So this is called "GuestLife."

4 Q. Right. And what was the image? Do you know?

5 A. No.

6 Q. Now, this was produced by you in discovery, so
7 presumably it fits the description of what was being asked
8 for, which was copies of licenses. Is that a fair
9 representation of what this is?

10 A. Yes. And, I mean, it's -- it is -- you know,
11 there -- there's -- there's a chance that it's -- that it's
12 a image in question, Balloons Touching Rio Grande River.

13 Q. Do you remember particularly what the image was?

14 A. Yeah, I -- I believe so. I believe it's the same
15 one that we've discussed that was on the puzzles, for
16 example.

17 Q. Okay. And the fee was \$275. The usage size was
18 "spread." What does that mean?

19 A. Two pages.

20 Q. And it says for first-time usage, standard rates
21 are -- are those standard rates?

22 A. Yes.

23 Q. Okay.

24 A. So again, as I explained to you before, in some
25 circumstances, I dictate what the price is. In some

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1 instances, they're -- they are negotiated, and in some they
2 are standard rates of a publication, of what they pay
3 everybody, and that's what this is.

4 Q. Is there a duration or period of time for the
5 rights being granted? Well, strike that.

6 A. I don't -- I don't --

7 Q. Strike that; strike that.

8 I think in paragraph No. 1, it says, "To appear in
9 the 2016/'17 GuestLife New Mexico, a GuestLife-branded
10 publication." So this was for a publication?

11 A. Well, if you're familiar, GuestLife is like one of
12 those books that they leave in hotels, about Phoenix or
13 Albuquerque, or whatever. That's what GuestLife is, so it's
14 a book that's -- that's placed for travelers who come to
15 hotels, for example.

16 Q. Did you ever do any other work for GuestLife?

17 A. I think they may have used my photos of
18 Albuquerque several times. I don't recall working with them
19 on any other cities.

20 Q. Okay. Let's look at MS_0002. Now, this is on
21 your standard form --

22 A. Correct.

23 Q. -- dated February 26th, 2016, to Dina Soto of Soto
24 Properties New Mexico. Do you know what Soto Properties
25 New Mexico is?

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1 A. From my memory, I believe they were a -- a very
2 small real estate firm.

3 Q. Okay. And this was --

4 A. And you see the license is for six months, which
5 is basically the shortest term that I offer for web use.

6 Q. Now -- and -- and I -- does this cover two
7 different photographs?

8 A. Correct. You can see they're -- again, my file
9 numbers, at the top line on each one, identify a different
10 photograph, 0273, 02959.

11 Q. So the second photograph, the charge was less?
12 Oh, no, more. \$50 more. What was the difference?

13 A. I don't know.

14 Q. Let's look at MS_0003 to Anna Palucka, dated
15 November 18th, 2013, for ZUK ELZAB SA, in someplace probably
16 far away.

17 A. In Poland.

18 Q. And how did it come to pass that you did some work
19 for Anna Palucka?

20 A. I -- I think they probably identified photographs
21 from my website, and this was for a corporate calendar of a
22 Polish company.

23 Q. What kind of company was it? Do you know?

24 A. I don't recall.

25 Q. How did you set the fee?

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1 A. I don't recall. In general, though, I will add
2 that other countries outside the U.S., particularly a
3 country like Poland, that isn't extremely well off, fees
4 would be lower.

5 Q. MS_0004. It says -- what is this?

6 A. It appears to be -- oh, it is. Yeah. This is a
7 pricing software that's built into -- into the photo
8 business -- software that I use for licensing, et cetera,
9 and so this -- this shows, you know,
10 Website.Promotional.Worldwide Market, 5 years, up to half
11 screen.

12 Q. So who is the -- did you have a client here? I
13 assume you did.

14 A. I don't recall. I'm not sure really how -- how
15 relevant it is, and it must have been, somehow, but I -- I
16 can't tell you why.

17 Q. So in the -- there are three boxes across the
18 center of that which is copied. In the box on the right --
19 I hate to tell you my eyesight is not what a younger
20 person's would be. I have a hard time reading this.
21 Something about duration. Can you read it?

22 A. Yeah. That's what I said. It -- it -- there are
23 like drop-downs -- drop-down menus of -- on the left is
24 the -- is -- is the type of use, Editorial/Corporate
25 Website, and then the center gives some information about

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1 that particular screen. And on the right side, it -- it
2 lists durations between one month and five years. It's
3 highlighted to "5 Years," so that's what -- and it's
4 highlighted to "Half Screen" on a website, and then above
5 shows the average price.

6 Q. Average price? What does that mean?

7 A. Well, it -- it -- you know, like this is -- this
8 is to help in -- in -- a photographer in -- in negotiating a
9 price and the value, and so you -- you can see there that --
10 and that's hard for me to read too. The low is around
11 2,037, and the high is around 4,074.

12 Q. I'm not seeing that, but --

13 A. It's below the larger price. It's right below it.
14 There's a box -- there's a white box that says,
15 "Geographic: --

16 Q. Okay. I see it.

17 A. -- U.S. Only."

18 Q. It says, "Range" and --

19 A. Right. Yep.

20 Q. Okay. Now, in that case, I'm going to show you a
21 document marked No. Next. It says, "Offer of Judgment."
22 Are you familiar with that?

23 (Exhibit 26 marked.)

24 A. Well, as I said, after the fact, not at the time.

25 ~~MR. DeSOUZA: I'm sorry, Jeff. Which -- what is~~

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1 this?

2 MR. SQUIRES: Offer of Judgment in the
3 Mountain States case.

4 MR. DeSOUZA: Thank you.

5 Q. (BY MR. SQUIRES) Are you telling us that this
6 offer was submitted without your authority?

7 A. Frankly, I can't -- I can't tell you for certain,
8 but in terms of the -- my knowledge of that entire case,
9 much of it was done by Mr. Deal without getting my approval.

10 Q. And you are aware that that Offer of Judgment was
11 accepted, correct?

12 A. Yes.

13 Q. Okay. And that all transpired in the summer of
14 2019, correct?

15 A. If that's what it says, yes. 2019; I see it right
16 there.

17 Q. Okay. And you were aware of the result of that
18 case, correct, at the time?

19 A. At the time?

20 Q. At the time the case was finally resolved.

21 A. I believe so. When it was resolved, yeah.

22 Q. Okay. And you've testified that you engaged
23 CopyCat Legal in December of 2021, correct?

24 A. No. Oh, yes. I'm sorry.

25 Q. Okay.

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1 A. Getting my years --

2 Q. And was Mr. Deal your attorney in the cases that
3 you brought and in the actions you took against alleged
4 infringers until you engaged CopyCat Legal?

5 A. In the previous -- in that previous year, 2021,
6 Mr. Deal became very hard to get ahold of. He was not
7 responding to my messages about any particular cases. He
8 left me in the dark about a lot of things, and essentially,
9 for about three-quarters of the year, he stopped trying to
10 close any cases.

11 Q. So at that time, you chose to change horses?

12 A. Correct.

13 Q. Okay. I'd like to take a break.

14 THE VIDEOGRAPHER: We're now going off the record.
15 The time is approximately 3:12 p.m. Watch your microphones
16 when you stand up, please.

17 (Brief recess taken.)

18 THE VIDEOGRAPHER: We're now going off the record.
19 The -- on the record. The time is approximately 3:26 p.m.

20 Q. (BY MR. SQUIRES) Mr. Harrington, I'm going to
21 show you a document marked as Exhibit 20 Something.

22 (Exhibit 27 marked.)

23 THE VIDEOGRAPHER: 7.

24 Q. (BY MR. SQUIRES) Wait, wait. I'm sorry. I've
25 ~~given you too much, I think. I'm not sure -- maybe -- I've~~

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1 given you too much. This is a Complaint for Copyright
2 Infringement in the case of Blaine Harrington v. Atlantis
3 CDS, LLC. Have you seen this before, Mr. Harrington?

4 A. Yes.

5 Q. Did you see it before it was filed?

6 A. I -- I'm not sure. Again, this is -- what year is
7 this from?

8 Q. 2018.

9 A. Okay.

10 Q. It's a Complaint for Copyright Infringement.

11 Would -- to save some time, would it be fair to say it is
12 similar in nature to the other copyright infringement
13 actions we've been dealing with today, in the sense that you
14 allege someone used a photograph that you took and owned
15 copyright in without consent and posted it on a website?

16 A. Yes.

17 Q. Okay. Do you know anything more than that about
18 the use by the defendant in that case?

19 A. Again, it's been some time, and I don't recall.

20 Q. Paragraph 17 of the Complaint says, "Plaintiff is
21 informed and believes that the foregoing act of infringement
22 was willful and intentional, in disregard of and with
23 indifference to the rights of plaintiff." Do you see that?

24 A. Yes.

25 Q. What facts do you have to support such a

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1 contention? What facts did you have to support such a
2 contention at the time?

3 A. Again, I can only say that this is written by the
4 attorney. He probably had knowledge of that. What that is
5 at this point, I -- I can't tell you.

6 Q. Okay. I'm going to show you a document marked as
7 Exhibit 28. In deference to you and Mr. DeSouza, I note
8 this is a Confidential Settlement Agreement and Release in
9 that case, Blaine Harrington v. Atlantis CDS. It contains a
10 confidentiality provision.

11 MR. SQUIRES: Do you wish to have this
12 submitted -- treated as confidential, under seal. Do you?

13 MR. DeSOUZA: I would say treat it as
14 confidential -- designate it as "Confidential." But beyond
15 that, Jeff, do -- do you not have any concern that your
16 client is violating a confidentiality clause by sharing that
17 in this deposition with -- I mean, I don't know what the
18 confidentiality clause is. I don't have the agreement. I
19 can't see it. It doesn't matter to me, but are -- are you
20 running afoul of some confidentiality obligation by using
21 this as an exhibit here?

22 MR. SQUIRES: That's why I'm asking you if you
23 want to have it treated as confidential and marked so under
24 seal, in connection with --

25 ~~MR. DeSOUZA: Stop a second. If --~~

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1 MR. SQUIRES: -- in connection with --

2 MR. DeSOUZA: If it's not a confiden- --

3 MR. SQUIRES: -- in connection with the
4 confidentiality order -- agreement and order in place in
5 this case. I have no such concerns.

6 MR. DeSOUZA: So my answer is yes, certainly;
7 however, I do not believe that simply calling it
8 "Confidential" under our protective order -- somehow avoid
9 the confidentiality clause, a contractual nature of such,
10 but that's not my concern. You know, that's between you and
11 your former client, not for me to worry about. So for
12 purposes of today, I will designate it as "Confidential"
13 under our protective order.

14 MR. SQUIRES: Okay.

15 Please have it so marked, as --

16 (Court reporter clarification requested.)

17 MR. SQUIRES: "Confidential" and "Sealed," under
18 the protective order, to assure that Mr. DeSouza's concerns
19 are respected.

20 (Exhibit 28 marked.)

21 Q. (BY MR. SQUIRES) Mr. Harrington, you agreed to a
22 settlement of this case for the payment of \$2,000.

23 A. Okay.

24 Q. Why?

25 A. ~~Why? I don't know. Again, I think that --~~

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1 through a lot of things, as I've already expressed, that
2 Mr. Deal did, that, in hindsight -- or after a period of
3 time, I don't really approve of.

4 Q. Okay. Fair enough. Turn to page 6 of this
5 agreement. Is that your signature?

6 A. Electronic signature, yes.

7 Q. Placed on this document under your authority?

8 A. Yes.

9 Q. I'm going to show you a document to be marked as
10 Exhibit Next. I'd ask you to turn to page 4 of this
11 document.

12 (Exhibit 29 marked.)

13 MR. DeSOUZA: Can you tell me what this is, Jeff?

14 MR. SQUIRES: I'm sorry. It is the Complaint for
15 Copyright Infringement in the case of Blaine Harrington v.
16 Monica Boehmer, DDS.

17 MR. DeSOUZA: How do I spell that? B-O-M-E-R?

18 MR. SQUIRES: B-O-each (phonetic) -- excuse me,
19 B-O-E-H-M-E-R.

20 MR. DeSOUZA: Thank you.

21 Q. (BY MR. SQUIRES) Are you familiar with this
22 matter, Mr. Harrington?

23 A. Again, in the past. I -- I -- I'm aware of the
24 name. I'm aware of the case, but beyond that, it's a long
25 time ago.

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1 Q. Do you remember any of the details of the case?

2 A. Not really.

3 Q. Do you remember what photograph was the subject of
4 the case?

5 A. One of the hot air balloon ones, I believe; yeah.

6 Q. I --

7 A. Yeah.

8 Q. -- note that it is -- a copy is attached as
9 Exhibit 2 and shown in Exhibit 3.

10 A. Yes.

11 Q. Have you ever alleged that anyone infringed a
12 copyright in that image before?

13 A. I can't say for certain, but I wouldn't -- I
14 wouldn't doubt it. This is a very popular photo.

15 Q. This is also taken at the same period of time --

16 A. Yes.

17 Q. -- in 2012, that you've been testifying about,
18 before?

19 A. Or was it 2013?

20 Q. Well, you said --

21 A. Wait a minute. I think -- let's see if it shows
22 my -- no. I don't know. It is what it is.

23 Q. Well, let me --

24 A. Let's --

25 Q. -- refer you to paragraph 8 of the Complaint.

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1 A. Okay. 2012.

2 Q. So would it -- this have been taken at the same
3 time that you have testified you took the other photographs
4 that have been the subject of the claims you've alleged in
5 our present case?

6 A. Yes.

7 Q. Now, you've been asked, in discovery, as to
8 whether or not there had been previous instances of you
9 having licensed photographs. At the time, in the Boehmer
10 case --

11 A. Uh-huh.

12 Q. -- did you do a search to determine whether or not
13 you'd ever licensed that photograph?

14 A. I would assume that I did.

15 Q. But you don't specifically recollect?

16 A. Correct.

17 Q. Okay. And in the Complaint in the Boehmer case,
18 on paragraph 20, you alleged that you were informed and
19 believe that the foregoing act of infringement was willful
20 and intentional. Who informed you of that?

21 A. Again, this is written by my attorney.

22 Q. Okay. So there was no basis for that --

23 A. I don't know.

24 Q. -- contention?

25 A. I mean --

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1 Q. You don't know of any basis for that contention?

2 A. No.

3 Q. Did the -- your attorney not -- you've testified,
4 earlier, that you reviewed Complaints before they were
5 filed.

6 A. Yes.

7 Q. Did you not review this Complaint before it was
8 filed?

9 A. Again, I mean, this is an older Complaint, and my
10 memory of it is vague.

11 Q. Okay. Paragraph 22 says, "Plaintiff is informed
12 and believes that defendant, without the permission or
13 consent of plaintiff, knowingly and with the intent to
14 conceal infringement, intentionally removed the copyright
15 management information from the copyrighted photograph." Is
16 it not so that you have no knowledge of facts to support
17 that contention?

18 A. I can't remember.

19 Q. So you do not know, as we sit here today, of any
20 facts that you had --

21 A. I -- I don't -- I don't remember what the --
22 what -- what the knowledge between -- either my attorney or
23 I had at that point.

24 Q. Okay. Do you -- do you understand that when you
25 file Complaints -- filed and probably drafted by your

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1 attorneys -- that you are responsible for the assertions
2 contained in the Complaints?

3 A. Yes. But as I said, it -- I'm not the one who
4 wrote it, the legalese. I'm not an attorney, and sometimes
5 the -- you know, I mean, he -- he is writing it. I'm -- I'm
6 perhaps reviewing it, and said -- and saying, "Yeah. It
7 looks okay to me." Right? I'm not an attorney.

8 Q. Okay. I'm going to show you a document -- it's
9 called a "Verified Answer and Counterclaims" -- in the case
10 of Blaine Harrington v. Monica Boehmer, and I'd ask that it
11 be marked as Exhibit -- Mr. Deal was your lawyer at the
12 time, correct?

13 (Exhibit 30 marked.)

14 A. Yes.

15 Q. Did he advise you that a counterclaim had been
16 filed?

17 A. I don't recall.

18 Q. Have you ever seen that document before?

19 A. I believe so.

20 Q. Did you discuss the fact that a counterclaim had
21 been filed against you with your counsel at the time?

22 A. I don't recall.

23 Q. I'm going to show you a document marked as Exhibit
24 Next. It is an Offer of Judgment in the Monica Boehmer
25 case, and the court reporter will mark it as Exhibit No.

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1 Next. Have you seen that before?

2 (Exhibit 31 marked.)

3 A. I believe so, yes.

4 Q. Okay. And you -- you know that -- by that
5 document, you agreed to awarding judgment to the person you
6 had sued, Monica Boehmer, DDS, in that matter that would
7 terminate that matter with a judgment in her favor?

8 A. Again, I don't recall the specifics.

9 Q. Did you discuss this with your attorney at the
10 time?

11 A. I'm not sure.

12 Q. When --

13 A. Several of your dealings with Mr. Deal, as I said,
14 I was really not privy to, and had I been better informed,
15 I -- I might have reacted differently. I was -- he -- he
16 really did not inform me a lot of many of the things that
17 transpired between you and him.

18 Q. Well, it's not between me and him. It's
19 between --

20 A. You representing --

21 Q. -- the clients.

22 A. Well, you representing your client.

23 Q. And you are aware, I believe, that on behalf of
24 Monica Boehmer I accepted the offer of judgment; is that
25 correct?

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1 A. I believe so, yeah.

2 Q. Do you know what an offer of judgment is?

3 A. To settle a case --

4 Q. Fair enough.

5 A. -- more or less.

6 Q. Okay. On the terms set forth in the offer?

7 A. Right.

8 Q. Okay. I'm going to show you a document marked No.
9 Next.

10 (Exhibit 32 marked.)

11 A. Uh-huh.

12 Q. This is a judgment in a civil action, correct? Is
13 that what I gave you?

14 A. Yes.

15 Q. Okay. Are you aware the judgment was entered in
16 accordance with -- as -- as reflected in that document?

17 A. Again, looking at this, I see it. Do I recall it?
18 No.

19 Q. Are you saying you don't know whether you knew it
20 at the time?

21 A. I -- I can't say.

22 Q. Do you pay attention to the cases that are filed
23 on your behalf?

24 A. Yes, I do. But as I said, you're -- you're

25 ~~bringing up cases that are years ago. My wife has been very~~

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1 busy in the last three or four years. I travel extensively.
2 I work on my business. This is primarily what I'm thinking
3 about. I only have so much brain matter.

4 Q. Look at the date on the top line of that document.
5 What's the date?

6 A. The date it was filed?

7 Q. Yeah.

8 A. 7-21.

9 Q. What year?

10 A. No. It says, "Filed 7 of '21."

11 Q. Oh, '21. So a little over a year ago -- just a
12 couple months over a year ago; is that right?

13 A. As I said, at that time, I basically had no
14 contact with Mr. Deal. I can't tell you what was going on.

15 Q. Well, you talked about how you're traveling,
16 right?

17 A. True.

18 Q. But you weren't traveling then, were you?

19 A. Last summer? No. So I'm not -- I'm not using
20 that as an excuse. I'm just saying in my day-to-day life,
21 you know, I have a lot of other things on my mind, but
22 again, to point that for three-quarters of that year, he
23 basically wasn't working for me, although he was still,
24 quote/unquote, "My attorney." So I -- things that may --

25 I -- I don't know. He -- he would say, "Oh, yeah, by the

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1 way, here's this," or something, you know.

2 Q. Did you have any communications with him about
3 your displeasure with the fact that he wasn't working for
4 you?

5 A. Yes.

6 Q. Were any of those communications written?

7 A. I imagine they were in emails.

8 Q. Okay. I'd like to request that you produce all
9 correspondence between you and David Deal concerning your
10 displeasure with his -- or your concern about his neglect of
11 his obligations to you during the time period beginning
12 January 1st, 20- --

13 A. '21?

14 Q. '21.

15 A. Well, I'll -- I'll -- I'll discuss that with my
16 attorney.

17 Q. Okay. And that would include any expression of
18 concern or displeasure as a result of judgment having been
19 entered in this case. And let's go back just a short period
20 of time before January 1st, 2021, to any displeasure over
21 the terms of the conclusion of the Mountain States Agency
22 case.

23 A. Well -- and -- and then a -- a certain amount of
24 it was -- was by phone, and not -- and not written.

25 Q. I understand; I understand.

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1 A. So --

2 Q. I don't expect you to produce voice recordings.

3 A. No, but -- so I'm saying some of these
4 conversations are -- are verbal, and I wouldn't have a
5 record of them.

6 Q. And I don't think that I could expect to get
7 verbal.

8 A. Right. I'm just -- I'm just saying.

9 Q. Sure. Okay. I'm going to show you a document to
10 be marked as Exhibit Next. Complaint for Copyright
11 Infringement, Blaine Harrington v. Elevation Counseling,
12 LLC.

13 (Exhibit 33 marked.)

14 A. You know, I would add too, in terms of this pile
15 of paper, for example, that -- I don't deny reading many of
16 these things. My memory of them is not always good, and the
17 other factor is I'm not an attorney, so I don't read them
18 word-for-word. I'm like -- because it's -- a lot of it is
19 legalese. I mean, it's up to me --

20 Q. How old -- excuse me. I'm sorry I interrupted.

21 A. No. I'm -- I'm just saying that, you know, I --
22 I'm in the middle of working in my workday. I'm working on
23 projects; I'll stop; I'll -- I will -- I will read this
24 thing. Do I read it word-for-word? I don't; I admit it.

25 Q. How old are you?

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1 A. Huh?

2 Q. How old are you?

3 A. Sixty-seven.

4 Q. Okay. And over what period of time have you been
5 asserting claims for copyright infringement in your
6 photographs, and if necessary, filing lawsuits?

7 A. Probably, as I said, within the last five years or
8 so.

9 Q. Okay. And you've become familiar with the legal
10 process, have you not?

11 A. More or less, yes.

12 Q. So in this Complaint for Copyright Infringement,
13 page 4, at the bottom of the page, the same statement,
14 "Plaintiff is informed and believes that defendant violated
15 plaintiff's exclusive rights. Action constitutes
16 infringement" -- strike that.

17 I meant to refer to paragraph 19. "Plaintiff is
18 informed and believes that the foregoing act of infringement
19 was willful and intentional" -- again, consistent with your
20 previous responses, is it true that you had no factual
21 information to support that contention at the time?

22 A. The fact is that I did not write it, and it was
23 done so in my name. My attorney must have had information
24 that led him to that conclusion, but I -- I can't recall any
25 discussions, and so on, as to what -- what led to that, but

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1 it was -- it -- it was written in my name, but I didn't
2 write it and it's not my words.

3 Q. Who discovered the fact of the use of the alleged
4 infringing photograph without consent?

5 A. In this case?

6 Q. Yes.

7 A. Well, as in -- as in almost all cases, I assume I
8 was.

9 Q. Okay. Was your attorney tasked, as part of his
10 responsibility, to go out and discover instances of
11 infringement of your photographs?

12 A. I don't know if "tasked" is the right word, but
13 it -- I -- I do believe that it -- it happened that some
14 other infringements were found in searching for -- for
15 example, one infringement, other infringements of the -- of
16 the same photograph may come to light, and that's, again,
17 speaking hypothetically.

18 Q. Because you don't know that?

19 A. Well, I mean, I -- I -- you know, I believe that
20 happened, but in terms of specifics, I can't give you
21 specifics.

22 Q. Okay.

23 MR. DeSOUZA: And -- and Jeff -- and, Jeff, just
24 to -- excuse me -- just to clarify. You keep saying "this"
25 and "that." I assume we're still talking about this

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1 Elevation Complaint and not -- to whatever attorney he had
2 at that time. That's what you're talking about now, right?

3 MR. SQUIRES: Yes.

4 MR. DeSOUZA: Okay.

5 Q. (BY MR. SQUIRES) And did Mr. Deal, who was your
6 attorney at the time, tell you that he had factual
7 information to support that contention, about the
8 infringement being willful?

9 MR. DeSOUZA: I'm going to object.

10 Hold -- hold on, Blaine.

11 THE WITNESS: Uh-huh.

12 MR. DeSOUZA: I'm going to object on the basis of
13 attorney-client privilege. I don't think --

14 And -- and again, Mr. Harrington, I can't really
15 advise you as to that former attorney, but to the extent
16 that your answer would reveal attorney-client
17 communications -- you have the option to waive that
18 privilege, but I do believe it to be privileged.

19 MR. SQUIRES: The -- the -- the witness has
20 already testified that it could have been his attorney who
21 advised him of facts that --

22 THE WITNESS: Well, perhaps --

23 MR. SQUIRES: -- supported that --

24 THE WITNESS: -- I shouldn't have said that.

25 ~~Maybe that's not information that's germane. Is that~~

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1 correct?

2 Q. (BY MR. SQUIRES) Well, then let me ask the same
3 question I've asked before again to put a cap on this. Are
4 you aware, as we speak today, of any factual information
5 that existed at the time this Complaint was filed to support
6 the contention that that defendant's actions were willful?

7 A. I don't remember.

8 Q. I'm asking you if you know today. I'm not asking
9 you if you remember. I'm asking you if you know --

10 A. Well, if I don't remember, then the answer is no,
11 because --

12 Q. Good; good. Okay. As long as we're clear. I'm
13 going to show you a document marked as Exhibit No. Next. It
14 is a Confidential Settlement Agreement and Release dated
15 April 24th, 2018, between Blaine Harrington and Elevation
16 Counseling, LLC. I -- I would propose and suggest that the
17 same treatment be shown this settlement agreement and the
18 settlement agreement that we previously discussed, I believe
19 in the Atlantis CDS case, and therefore that this exhibit be
20 marked as "Confidential," under seal.

21 MR. DeSOUZA: I -- as -- as -- sorry. Jeez. As
22 with before, I agree to treat this as confidential and still
23 express my belief that doing so is not -- is not in line
24 with what the confidentiality clause in this agreement
25 likely requires, but again, that's -- that's for a different

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1 day.

2 (Exhibit 34 marked.)

3 Q. (BY MR. SQUIRES) Have you seen this before,
4 Mr. Harrington?

5 A. This?

6 Q. The Confidential Settlement Agreement.

7 A. Yes. I believe so.

8 Q. And is that your signature --

9 A. Yes, it is.

10 Q. -- on this document?

11 A. Yes.

12 Q. And did you discuss this with Mr. Deal before you
13 executed it?

14 A. I believe so.

15 Q. Do you know who drafted the initial draft of this
16 agreement?

17 A. On our part?

18 Q. Yes.

19 A. I believe David Deal.

20 Q. Yes. And did he draft confidential settlement
21 agreements in a significant number of cases that he settled
22 on your behalf?

23 A. I don't know. I mean, I can't recall exactly.

24 Q. He did represent you in a significant number of
25 cases that were settled, right?

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1 A. Yes.

2 Q. Okay. And in each case, was there a settlement
3 agreement entered by the parties?

4 A. I'm not a hundred percent sure. There should have
5 been, but I -- I'm not -- I'm not sure I recall seeing
6 documents on every single case that I was paid for.

7 Q. Did you see documents in, would it be safe to say,
8 the large majority of cases in which --

9 A. Yeah. I think so.

10 Q. Okay. And were they all essentially of the same
11 form as this one when -- when Deal was representing you?

12 A. As best I can tell. I mean, you know, most people
13 use boilerplate, so I -- I imagine -- I imagine it doesn't
14 change that much from one to the next.

15 Q. Right. And in this case, Elevation Counseling,
16 there were two photographs involved. Do you recall that?

17 A. I don't recall, but -- I mean, I see that from the
18 screenshots of my website and they -- their use by them.

19 Q. And you see here, in paragraph 5(a), that a total
20 of \$3,000 was paid --

21 A. Yes.

22 Q. -- as consideration? Did you discuss that amount
23 with Mr. Deal?

24 A. Probably not. He had -- he had the authority, as
25 other attorneys of mine have, to use their best judgment,

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1 and so -- so I -- I can't say that in every case where
2 there's a settlement am I informed, before it settled, of
3 the amount.

4 Q. So your attorneys have the authority to use their
5 best judgment in determining how much to accept in
6 settlement of cases?

7 A. Yes. I mean, that's -- as copyright attorneys,
8 that's more their expertise than mine, or it ought to be.

9 Q. Okay. Were you aware -- were you aware that
10 Elevation Counseling was a not-for-profit organization?

11 A. No.

12 Q. Okay. I'm going to show you a document -- a
13 Complaint for Copyright Infringement in the case of
14 Blaine Harrington v. Industrial Commercial Coatings, and I'm
15 going to ask that this be marked as Exhibit Next. Do you
16 recognize this?

17 (Exhibit 35 marked.)

18 A. Do I recognize what?

19 Q. The Complaint.

20 A. Oh, okay. Yes.

21 Q. Okay. This was filed on your behalf by Mr. Deal,
22 I think.

23 A. Yes.

24 Q. Did you review this Complaint before it was filed?

25 A. I believe so.

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1 Q. At paragraph 15 on page 4, it says that you were
2 informed and believe that the foregoing act of infringement
3 was willful and intentional, in disregard of and with
4 indifference to the rights of plaintiff. At the time, did
5 you have any factual information on the basis of which that
6 statement was made?

7 A. Again, that would be the determination of my
8 attorney. I do notice here, though, that No. 9 shows how
9 extensively they made use of the photo -- Facebook,
10 YouTube --

11 Q. Could I ask --

12 A. -- Twitter.

13 Q. Could I ask you, Mr. Harrington, to try to adhere
14 to answering my questions.

15 A. Well, it seems pretty egregious to me. That's
16 what I'm saying.

17 Q. I'd ask -- I'd ask you to adhere to answering my
18 questions.

19 A. Okay.

20 Q. So is it true that you had no factual basis for
21 that statement?

22 A. Me, personally? No.

23 MR. DeSOUZA: Object to form. It's all right. I
24 just want to object to form.

25 Q. (BY MR. SQUIRES) The answer is no; is that

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1 correct?

2 A. Correct.

3 Q. Do you know how this case was resolved?

4 A. I don't recall. I believe it was. No?

5 Q. Excuse me?

6 A. I said, "I believe it was resolved."

7 Q. Okay. Settled?

8 A. Settled.

9 Q. Do you remember how much was paid?

10 A. No, I do not.

11 Q. Do you remember that something was paid?

12 A. I believe so.

13 Q. Okay. I'm going to show you a document that's
14 marked as Exhibit No. 36.

15 (Exhibit 36 marked.)

16 A. This case was not yours, correct?

17 Q. Do you recall this case?

18 A. I --

19 MR. DeSOUZA: Jeff, can you tell me what it is?

20 MR. SQUIRES: This is Blaine Harrington v. Cool
21 Destinations.

22 A. Yes.

23 MR. DeSOUZA: Is it a Complaint?

24 MR. SQUIRES: It is a Complaint.

25 MR. DeSOUZA: Thank you.

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1 MR. SQUIRES: It is in the Western District of
2 Virginia from -- filed in 2017.

3 Q. (BY MR. SQUIRES) Are you familiar with this case?

4 A. I recall the name of the company.

5 Q. Paragraph 17 of the Complaint states similarly to
6 others. I -- I know these are the same questions, and I
7 just want to get it on record that plaintiff is informed and
8 believes that the foregoing act of infringement was willful
9 and intentional. You have no factual basis for having said
10 that; is that correct?

11 A. Again, this was --

12 MR. DeSOUZA: Object to form.

13 A. This was said on my behalf. Do I -- do I have
14 knowledge of it? No.

15 Q. (BY MR. SQUIRES) Okay.

16 A. That doesn't mean -- that doesn't mean it's not
17 true, but it -- it means that, right now, I can't tell you
18 what exactly transpired.

19 Q. Did you discuss -- Mr. Deal was your lawyer in
20 this case, was he?

21 A. Yes.

22 Q. Did you discuss this with him at the time?

23 A. Well, I imagine I was shown it to review it.
24 Beyond that, probably not. Again, I'm not an attorney. I
25 leave legal matters to my attorneys.

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1 Q. You see the photograph that is attached to this --

2 A. Yes.

3 Q. -- Complaint? What is that a photograph of?

4 A. It's a sailing ship called the "Western Union"
5 that is based in Key West, Florida.

6 Q. And do you know when you took it?

7 A. Well, according to my file number that is there,
8 2011.

9 Q. Okay. Have you ever licensed the use of that
10 photograph?

11 A. That particular photograph, I cannot tell you. I
12 know that the series of photographs have -- from the overall
13 series of photographs, certainly some have been licensed,
14 but in terms of that particular image, I don't know.

15 Q. I'm going to show you a Complaint in the case of
16 Blaine Harrington v. Perikin Enterprises and ask that it be
17 marked as Exhibit 37.

18 (Exhibit 37 marked.)

19 MR. DeSOUZA: Can you spell that for me, Jeff?

20 MR. SQUIRES: P-E-R-I-K-I-N, in the District of
21 New Mexico.

22 MR. DeSOUZA: Thank you.

23 Q. (BY MR. SQUIRES) Do you recall this case,
24 Mr. Harrington?

25 A. Yes, I do.

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1 Q. Do -- if you look at the -- the photograph on
2 page 7 and on the last page as well -- oh, I've got the
3 wrong -- oh, I'm sorry. I've got the wrong -- the
4 photograph is on page 8.

5 A. Oh, yes.

6 Q. And on the last page, there's an image of it.

7 A. Yes.

8 Q. Was this photograph taken on the same occasion,
9 on -- in 2012, that --

10 A. Yes.

11 Q. -- you testified to previously? Is this
12 photograph a photograph that is also the subject of one of
13 your claims in the present case?

14 A. I'm not sure. It could be. I mean, I've had -- I
15 had multiple panoramics.

16 Q. Okay.

17 A. But, you know, certainly, if we put one next to
18 the other, I could tell you if they're the same, or the file
19 number.

20 Q. And in paragraph 17, same -- same statement,
21 you're informed and believe the foregoing act of
22 infringement was willful and intentional, in disregard of
23 and with indifference to the rights of plaintiff. And as we
24 sit here today, you know of no factual basis for that
25 statement; is that correct?

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1 A. Yeah. It's the -- it's the same -- it's the same
2 statement, and --

3 Q. Right.

4 A. -- as -- as made in the other filings, so -- yeah.
5 The answer is no, I -- I believe.

6 Q. The same statement is repeated in paragraph 23, is
7 it not, for -- for -- for emphasis?

8 A. Yes.

9 Q. Okay. I'm going to show you a document. It's
10 going to be marked as Exhibit 38. I ask you if you recall
11 this case.

12 (Exhibit 38 marked.)

13 A. Yes.

14 Q. It's Blaine Harrington v. Sandia Insurance Group,
15 LLC, in the United States District Court for New Mexico --

16 A. Yes.

17 Q. -- filed in 2018. And Mr. Deal was your lawyer.
18 The image is Exhibit I -- 1 -- I guess 1, and repeated on
19 Exhibit 2. Is that photograph a photograph that you have
20 licensed?

21 A. I don't know.

22 Q. Might you have?

23 A. I might have.

24 Q. I'd like to make a request that you search -- I've
25 asked for this before. I haven't received anything, I don't

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1 believe, but I could be in error here -- for any licenses
2 you have entered for any of the four photographs that are at
3 issue in the present proceeding.

4 A. Uh-huh.

5 Q. Paragraph 17 of the Sandia Insurance Group
6 Complaint -- identical to those I've been reviewing
7 previously -- says that plaintiff is informed and believes
8 that the foregoing act of infringement was willful and
9 intentional, in disregard of and with indifference to the
10 rights of the plaintiff. I -- is it true that you know of
11 no facts that support that allegation?

12 A. Yes.

13 Q. Next, I'm going to show you a document that will
14 be marked as Exhibit 39. It's a Complaint for Copyright
15 Infringement in the case of Blaine Harrington v. The
16 International Spy Museum. I'd like to particularly bring
17 this case to light because I've been to The International
18 Spy Museum, and it's pretty boring. And I wouldn't
19 encourage anybody to go there, but --

20 (Exhibit 39 marked.)

21 MR. DeSOUZA: Talking about the one in D.C.?

22 MR. SQUIRES: Yes.

23 Q. (BY MR. SQUIRES) And this --

24 MR. DeSOUZA: I've been there as well.

25 Q. (BY MR. SQUIRES) This case is in the District of

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1 Columbia, District Court. Now, I've packaged together in
2 this exhibit the Complaint and a demand letter dated
3 February 15th, 2017, from the law firm Schneider Rothman in
4 Boca Raton, Florida, a Mr. Joel Rothman. I take it that
5 this law firm represented you at one time?

6 A. Through Pixie.

7 Q. When you say "through Pixie," what does that mean?

8 A. It means that Pixie retained -- or had
9 relationships with a number of different attorneys, both in
10 the U.S. and other countries, and if I deemed it -- deemed
11 it fit, I would allow them to turn it over to one of their
12 attorneys, and then -- and then as part of that, Pixie takes
13 a percentage of the -- of the reward, or the settlement.

14 Q. And the law firm takes a percentage of the
15 reward --

16 A. Of course.

17 Q. -- as well?

18 A. Yes.

19 Q. And you take the balance?

20 A. Or -- yeah, however it works.

21 Q. Okay. Did the law firm represent Pixie or did it
22 represent you? Do you know?

23 A. No, I don't know. I mean, I assume they're -- I
24 don't know. In terms of exactly -- I mean, I assume they're
25 representing both of us.

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1 Q. Did anybody ever explain to you what it meant for
2 Pixie to be involved in that sort of --

3 A. Arrangement?

4 Q. -- in-between -- go-between --

5 A. Well, no.

6 Q. -- situation?

7 A. I mean, I under- -- I understood what was going
8 on.

9 Q. Right.

10 A. Sure.

11 Q. But you don't know whether the law firm was
12 representing you?

13 A. Well, I assume -- I -- my assumption -- again,
14 it's an assumption -- it's me, because I'm the one whose
15 name is on it. Pixie's name is not on it --

16 Q. Okay.

17 A. -- so --

18 Q. In this letter that's part of Exhibit 39, the law
19 firm makes a settlement demand -- it's on page 5 -- 4 --
20 page 4 of the letter -- sorry -- page 4 of the letter -- of
21 \$4,200. Did you authorize them to do so?

22 A. I'm sorry. Where is it?

23 Q. On page -- it says, "page 4 of the letter."

24 A. And it's under what number? Or -- oh, the letter,
25 ~~page 4 of the letter. Okay. Is that further back?~~

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1 Q. Further back.

2 A. Okay. This is a -- a letter written to this
3 Mr. Maltz? Is that what you're talking about, or something
4 else?

5 Q. Yes, page 4 of the letter.

6 A. I don't see where it is on page 4.

7 Q. Do you see where the letters are numbered -- where
8 the pages of the letter are numbered?

9 A. Well, I see, at the top, where it says, "Case,"
10 "Filed" --

11 Q. No, no, no. Look at the left side.

12 A. Oh, all right. This says, "page 5." Oh, and it
13 says, "page 4." Yeah. Okay.

14 Q. You see where they demanded \$4,200?

15 A. Yes.

16 Q. Did they do that with your authority?

17 A. I believe so.

18 Q. Okay. Do you recall --

19 A. No, I don't recall.

20 Q. -- discussing this with them? Now, the -- the
21 photograph at issue, as described in the Complaint, is a
22 photograph of one of the most well-known and one of the most
23 often photographed sites in Washington, D.C., correct?

24 A. Yes.

25 Q. I take no credit away from you -- it's a nice

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1 picture; it's interesting -- but the memorial at Iwo Jima,
2 everybody and their brother goes there and everybody and
3 their brother takes pictures there, right?

4 A. Sure; yes.

5 Q. Okay.

6 A. Is there a point to that?

7 Q. Well --

8 A. The -- the amount that something is photographed
9 doesn't have anything to do with the value. I mean, I'll
10 give you examples of where pictures of mine of things that
11 are photographed day in and day out around the world -- like
12 the Taj Mahal of mine, in -- in -- in search results on
13 Getty, and so on, that they use algorithms, rank much
14 higher. The same can be said of hot air balloons in -- in
15 Albuquerque, and you could say, "Oh, well, that's something
16 that people photograph every day." That has nothing to do
17 with the merits of a -- pardon me -- of a professional
18 photo.

19 Q. Does it have nothing to do with the value of a
20 professional photo?

21 A. Does it have to -- no, not really. Does it --
22 how -- how common something is? I -- it -- I really don't
23 believe so. There are things that I photograph that are
24 uncommon, that people don't have. It -- the value of -- you
25 know, values are all over the place. But the fact that it's

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1 something that people have seen over and over again --
2 the -- the -- Machu Picchu in Peru, or something like
3 that -- does that -- does that hinder money I've made in the
4 past, on those kind of really well-known -- what you would
5 say are common things? No, not at all. That's where a
6 professional photo is important and that's where there are
7 intrinsic values that only professionals could understand
8 that would make my picture more valuable than Joe Blow with
9 his phone.

10 Q. So the -- the rarity of photographic images of a
11 particular subject have nothing to do with the value of the
12 photograph?

13 A. I won't say -- I won't say -- I'm sorry for
14 interrupting -- I won't say that it has nothing to do with
15 it. I mean, you know, if I saw, you know, the Abominable
16 Snowman, and no one else had taken a picture of it, well,
17 that's going to make that very valuable, but it -- it --
18 it -- it -- it depends more on supply and demand -- well, I
19 won't say "supply and demand." That is not exactly the
20 right words, but -- you know, I could have a really unusual
21 picture taken in some African country that nobody goes to,
22 and then I could have a picture taken in Morocco, where many
23 people go to.

24 So, you know, there's a lot of factors that go
25 into it, but I -- I'm just saying that -- you know, just

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1 because a lot of people have taken a picture of something,
2 especially untrained people -- but even lesser
3 professionals -- I mean, I've -- I -- this is how I win
4 awards on a regular basis, versus -- sometimes up against
5 10- or 20,000 other photographers, with one image that I've
6 won. And this is how my pictures have gotten on Bing, where
7 they have access to hundreds of millions of pictures, you
8 know. I mean, there -- there are people who make these
9 decisions, who understand better than -- than -- than most
10 people, and that's what I base my career on.

11 Q. Did you win any awards for this picture -- this
12 picture at Iwo Jima?

13 A. No. No, because I haven't ever entered it into
14 an -- for an award.

15 Q. Did you ultimately settle this case?

16 A. Yes.

17 Q. Do you remember what the terms of the settlement
18 were, in terms of monetary consideration paid?

19 A. Well, I assume it's the amount that was given, the
20 4,200, or whatever you said.

21 Q. You assume it was the amount that was demanded?

22 A. Yes.

23 Q. Is that usually the way it works, in your
24 experience?

25 A. Well, I -- I doubt that that -- I doubt that that

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1 was their first offer.

2 Q. Why do you doubt it? It wasn't their offer. It
3 was your demand.

4 A. Well, I can't tell you for certain, but I do
5 believe it settled for that amount.

6 Q. Okay. I'd like to see a copy of the settlement
7 agreement, please. Of course, I'd like to see a copy of the
8 settlement agreements --

9 A. Yes. I understood.

10 Q. -- in all the cases I've asked for.

11 A. Uh-huh.

12 MR. DeSOUZA: We're going to objection [sic] to
13 that, Jeff. You know that.

14 MR. SQUIRES: I know.

15 Q. (BY MR. SQUIRES) Okay.

16 MR. DeSOUZA: Jeff, can we take a couple minutes
17 just for a quick bathroom break?

18 MR. SQUIRES: Of course. It's -- listen, it's 20
19 of 5:00. The court reporter would like to get out of here
20 at some kind of reasonable hour. She would like to be able
21 to leave by --

22 (Court reporter response.)

23 MR. SQUIRES: I think we will not have to go all
24 day tomorrow, but we will have to go tomorrow. And so if
25 the court reporter would like to leave by 5:30 -- if she'd

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1 like to leave by 5:15, it's okay with me.

2 If you're -- your comfort level is what matters
3 here, because I will be able to finish tomorrow.

4 Is that okay with you, Dan and Mr. Harrington and
5 Mr. Best and --

6 THE VIDEOGRAPHER: No.

7 MR. DeSOUZA: I mean, at the -- at the -- at -- at
8 the end of the day, you know, Mr. Harrington is here. He's
9 happy to keep going as long as it takes. You know,
10 obviously, if this were one party -- one party, I would say,
11 "We've got seven hours on the record. He's here for the
12 full seven hours. That's what you get." I understand your
13 point, that I've got multiple clients on your side and that
14 you're not necessarily limited to the same seven hours,
15 so -- you know, at the end of the day -- if -- if you have
16 to go tomorrow, you have to go tomorrow, but Mr. Harrington
17 will stay tonight, as long as necessary, to wrap up the
18 depo. But if you -- obviously, if you can't finish tonight,
19 then so be it.

20 MR. SQUIRES: We should be off the record.

21 THE VIDEOGRAPHER: We're now going off the record.
22 The time is approximately 4:38 p.m. Watch your mics.

23 (Brief recess taken.)

24 THE VIDEOGRAPHER: We're now going back on the
25 record. The time is approximately 4:47 p.m.

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1 Q. (BY MR. SQUIRES) Show you a document that I'm --
2 well, let me see if -- yeah. Marked as Exhibit 40, I think.
3 This is a Complaint in the matter of Blaine Harrington v.
4 North Bay Bavarian, Inc., in the Northern District of
5 California. Mr. Harrington, do you recall this matter?

6 (Exhibit 40 marked.)

7 A. Yes.

8 Q. Do you remember what the nature of the
9 infringement was in this matter?

10 A. No.

11 Q. Is it not the fact that in -- do you -- do you
12 recall how the fact of the infringement was discovered --
13 the alleged --

14 A. I --

15 Q. -- infringement?

16 A. I believe I discovered it.

17 Q. And how did you discover it?

18 A. By some kind of reverse search, as always.

19 Q. As always. Because in all these cases, they all
20 involve people posting your images on their websites or
21 social media, correct?

22 A. Yes.

23 Q. Okay. Attached to and part of this exhibit, at
24 the very end, is a letter from Savur Threadgold --

25 ~~apparently from Beverly Hills, California -- to a Mr. Rick~~

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1 Row. Do you see that?

2 A. Yes.

3 Q. Okay. In that letter, the lawyers assert that
4 the -- and I quote from the second paragraph on the first
5 page of the letter, "This blatant unauthorized use of the
6 infringed work constitutes knowing, willful, and flagrant
7 violations of our client's rights." Did you talk to the
8 lawyers --

9 A. I don't recall.

10 Q. -- at any time?

11 A. I don't recall.

12 Q. How did you find these lawyers?

13 A. They were through Pixie.

14 Q. Okay. So might they have filed a Complaint in
15 this case without communicating with you?

16 A. Possibly.

17 Q. Did they have the authority to set the price
18 demanded for the payment for the infringement?

19 A. Yes.

20 Q. And the terms of their compensation was set by
21 whom?

22 A. By Pixie.

23 Q. And do you know how much they demanded?

24 A. No. I don't recall.

25 Q. Okay. Do you know how much -- was this case

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1 settled?

2 A. I don't recall.

3 Q. Do you have any cases that were just left open
4 and -- that you filed over the past five years that there
5 was no resolution to?

6 A. I don't recall.

7 Q. Okay. And you don't recall whether there was any
8 settlement agreement entered in this case?

9 A. That's what I said.

10 Q. Do you recall this picture, the image, that was
11 the subject of the case that was attached to the letter that
12 we're discussing?

13 A. Yes.

14 Q. What is that an image of?

15 A. It's a coastline of California, Highway 1.

16 Q. Taken where?

17 A. Somewhere between Sonoma and Mendocino Counties in
18 Northern California.

19 Q. Okay. Have you ever licensed?

20 A. I don't recall.

21 Q. If you have, I'd like to see copies of the license
22 for this, and any other photographs that are the subject of
23 any of your infringement suits. Mr. Harrington, I'm going
24 to give you a copy of a document that's going to be marked

25 as Exhibit 41. Let's see. Like some of the others, it's a

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1 Complaint in the matter of Blaine Harrington v. Color
2 Passport, Inc., in the District Court for the Southern
3 District of New York, and part of this document is a letter
4 dated April 10th, 2017th [sic], from the firm of Spector
5 Gadon & Rosen. This one addressed to Bart Van Tigchelt. I
6 can't pronounce the name. Are you familiar with this,
7 Mr. Harrington?

8 (Exhibit 41 marked.)

9 A. Yes.

10 Q. Who chose the law firm that represented you in
11 this matter?

12 A. This also came from Pixie.

13 Q. Okay. Did the law firm discuss this matter with
14 you?

15 A. I don't recall.

16 Q. Might they have drafted this Complaint without
17 having communicated with you?

18 A. I don't recall.

19 MR. DeSOUZA: Object to form.

20 A. I don't recall.

21 Q. (BY MR. SQUIRES) Do you know where they got
22 the -- I'm looking at the information alleged on the second
23 page of the Complaint, under Parties, describing you. Do
24 you know where they could have gotten that information, if
25 not from you?

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1 A. From my website.

2 Q. Who discovered the alleged infringement?

3 A. I did.

4 Q. Through the use of Pixie's services?

5 A. I would -- I -- I -- I think so.

6 Q. See the image, several copies of which are
7 attached to this -- is this the same image that is the
8 subject of one of your claims in the current lawsuit?

9 A. Yes.

10 Q. Have you ever licensed this image?

11 A. I don't recall.

12 Q. The letter which is at the very back of this
13 exhibit, dated April 10th, 2017, demands -- or I should
14 say -- it says that, "Mr. Harrington has authorized me to
15 attempt resolution of this matter amicably by issuance of a
16 retroactive license for an unauthorized use consisting of a
17 three-month term for up to half-screen use for promotional
18 purposes on a website with a worldwide market for a fee of
19 \$5,000." Is that true? Did you authorize him to attempt to
20 resolve this on those terms?

21 A. I believe so.

22 Q. Was this matter ultimately resolved?

23 A. I don't recall.

24 Q. And therefore you wouldn't know what, if any,
25 ~~terms were ultimately agreed to to resolve the matter?~~

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1 A. Yes. And I -- I -- I don't remember.

2 Q. But if it had been resolved and there was a -- an
3 agreement, written, there would be a copy of that agreement
4 in your files, would there not be?

5 A. Most likely, yes; uh-huh.

6 Q. Consistent with what I've asked for in other
7 cases, I'd like to see a copy of that agreement.

8 A. Uh-huh.

9 Q. I'm looking at the Complaint now. Paragraph 27,
10 you say that, "Plaintiff alleges, on information and belief,
11 that defendant operates its business by routinely stealing
12 and exploiting photographic images without payment."

13 A. Uh-huh.

14 Q. Did -- did you, at the time, have any factual
15 basis for that statement?

16 A. I believe the --

17 THE WITNESS: Bless you.

18 A. I believe the attorney did.

19 Q. (BY MR. SQUIRES) I don't --

20 A. Do you want any -- not --

21 Q. That's not -- that wasn't my question. My
22 question was, did you?

23 A. I don't remember.

24 Q. So you cannot recall that there was a factual
25 basis for that statement?

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1 A. Correct.

2 Q. So you do not know if there was a factual basis
3 for that statement?

4 A. I don't recall.

5 Q. But you don't know?

6 A. Well, I don't recall what -- what transpired.
7 Again, these -- these -- you know, without having the
8 paperwork in front of me, I can't give you a -- a definite
9 answer.

10 Q. You can't tell me whether, today, you know of any
11 facts that would have justified that statement?

12 A. I don't recall.

13 Q. Okay. I'm going to show you a copy of a Complaint
14 in the matter of Blaine Harrington v. Mark Nagler, or
15 Nagler, N-A-G-L-E-R, doing business as Telluride Venture
16 Accelerator, in the District of Colorado, and ask you if you
17 recall having seen that. Mark this Exhibit 42, I believe.

18 (Exhibit 42 marked.)

19 A. Yes.

20 Q. Do you recall what that was about?

21 A. I believe it was some kind of venture capital
22 company down there -- in Telluride area, in Southern
23 Colorado.

24 Q. And do you recall what use they made of a
25 photograph that you claim infringed your copyright?

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1 A. Well, it -- it looks like it's on a website or a
2 blog from their -- yeah, from their website.

3 Q. Okay. What is the photograph of in -- in question
4 here?

5 A. It's taken near Telluride in fall, and it's a
6 well-known road through the mountains that is extremely
7 photogenic.

8 Q. And how did you take this photograph?

9 A. While driving, and stopped. I -- I've driven this
10 area of Colorado many times over many years, so it's
11 well-known to me.

12 Q. Okay. It's well-known to others as well?

13 A. Correct.

14 Q. Similar to allegations in other pleadings we have
15 looked at, paragraph 22 says, "Plaintiff has engaged the
16 undersigned attorneys and has agreed to pay them a
17 reasonable fee." Just want to make sure I understand. Do
18 you recall whether you engaged them or Pixie engaged them?

19 A. Pixie engaged them.

20 Q. Okay. Attached to this Complaint, there is a
21 letter dated May 8th, 2016, from David Deal, which he sent
22 to the company that you ultimately sued. Did you see this
23 letter before it was sent?

24 A. I don't remember.

25 Q. It says that -- on page 2, it proposes that the

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1 ultimate defendant pay \$4,000 to Mr. Deal's office to
2 compensate for the infringement. And Mr. Deal, you've
3 testified, had the authority to set that dollar figure,
4 right?

5 A. Yes.

6 Q. Okay. How -- what was the percentage of that
7 dollar figure that Mr. Deal would have been entitled to
8 keep?

9 A. I do not recall the -- the -- how this case
10 transpired -- I mean, the fact that there was a letter from
11 Schneider Rothman and from Deal. They would both have been
12 representing Pixie. Deal worked for Pixie often.

13 Q. Did you have -- other than in this case, did you
14 have a standing relationship with Mr. Deal in terms that
15 governed his representation?

16 A. Not in writing. But again, if this case orig- --
17 originally began from Pixie, that's where it ended.

18 Q. Well, you had an arrangement with Pixie. What
19 percentage --

20 A. I don't --

21 Q. -- would you --

22 A. I don't remember.

23 Q. -- would you keep?

24 A. I don't remember.

25 Q. Okay. You said you had an understanding with

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1 Mr. Deal outside of this case, oral, about the terms of his
2 representation; is that right?

3 A. Basically, yes; uh-huh.

4 Q. What was the percentage that he was entitled to
5 keep?

6 A. I believe if no lawsuit was filed, the percentage
7 was 30 percent, and I think -- otherwise, the percentage
8 went to 35 percent.

9 Q. Okay. What is the arrangement -- what are the
10 percentages that you have with your present law firm,
11 CopyCat Legal?

12 A. Is -- is that not privileged?

13 Q. I don't think so.

14 MR. DeSOUZA: Jeff, under --

15 Q. (BY MR. SQUIRES) You're -- you're claiming
16 damages.

17 MR. DeSOUZA: I -- I -- Jeff, I'm not going to
18 help him along, but under Florida law, the engagement letter
19 is not privileged.

20 So, Mr. Harrington, to the extent you -- to the
21 extent you recall the terms in our relationship -- or the
22 terms of our engagement, you can certainly testify about
23 that.

24 THE WITNESS: Okay.

25 A. Their percentage, regardless, is 40 percent.

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1 Q. (BY MR. SQUIRES) Okay. And you bear the
2 expenses?

3 A. Of court costs and so on?

4 Q. Yes.

5 A. Yes.

6 Q. I'm going to show you a document I'm sure you've
7 seen.

8 MR. SQUIRES: Dan, this is a -- to be marked as
9 Exhibit 43. This is an order granting a motion to dismiss
10 Counts II and III of plaintiff's first Amended Complaint in
11 the case of Blaine Harrington v. Pinterest. In the --

12 (Exhibit 43 marked.)

13 A. No, no, no. No, no.

14 THE WITNESS: What did he say?

15 (Court reporter response.)

16 THE WITNESS: Oh, okay. I -- I heard it wrong.

17 Q. (BY MR. SQUIRES) You filed this case. It's in
18 the Northern District of California. What is it about?
19 What was the case about?

20 A. Essentially, photographs are loaded onto Pixie's
21 site by individuals.

22 Q. Are you talking about Pixie or are you talking
23 about Pinterest?

24 A. I'm talking about Pinterest. I'm sorry. Onto
25 Pinterest's site, and at that point, Pinterest strips out

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1 the metadata. They also take it, at that point, and
2 repackage it and send it to more people, and most of the
3 boards that they're on are -- every third or fourth picture
4 is advertising, so they're -- they're -- they're not paying
5 professional photographers to use their work, but they are
6 monetizing it.

7 As well, people, again, think the pictures on
8 Pixie -- or I'm sorry. I keep confusing them -- on
9 Pinterest is there for the taking, and many of the pictures
10 that are on Pinterest are stolen by either -- either
11 individuals or they have been stolen by companies. And as I
12 said, I -- I have done my own searches, as well as these
13 attorneys have -- have done their work, but, you know, I've
14 found something like a hundred thousand links to my work on
15 Pinterest.

16 Q. And there has been a decision -- you have in your
17 hands -- dismissing a part of your Complaint?

18 A. Yes.

19 Q. It's complex legal stuff, right?

20 A. Well, yeah. I mean, from my understanding,
21 Pinterest has already had to change some of their methods
22 and their -- and -- and the way they go about some of these
23 things, even as a result of perhaps things that were
24 dismissed. I mean, ultimately, like all social media
25 companies, Pinterest is extremely successful, and they --

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1 they make billions of dollars, and I've -- you know, while I
2 was watching this case, I should have bought their stock,
3 because it's done pretty well.

4 Q. Let that be a lesson to you. And you are probably
5 aware of the decision in the case of Harold Davis v.
6 Pinterest --

7 A. Yes.

8 Q. -- Inc., that has been brought to the attention of
9 the Court that is overseeing your case, correct?

10 A. Davis's case is filed by the same attorneys, and
11 Davis's case came first. At some point, they wanted to join
12 our two cases, but the judge did not agree to do so.

13 Q. So your concern is that Pinterest has your images
14 accessible on its website; is that correct?

15 A. Yes, and that they -- and -- and that,
16 consequently, they monetize it and -- and make money, and
17 they do not compensate those photographers for doing so,
18 and -- and particularly someone like me, who has, like I
19 said, a hundred thousand links.

20 Q. And Pinterest, as I understand it -- I think you
21 used the word "stripped," but does not include any
22 information identifying you as the photographer or the
23 copyright proprietor?

24 A. In some cases, pictures have been taken --

25 THE WITNESS: Bless you.

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1 A. -- from my website, and they contain my name
2 and -- and/or other information, but in other cases where
3 they may have originated somewhere else on the web, they
4 don't. But regardless, if they -- if they did have
5 metadata, they stripped it, removed it.

6 Q. (BY MR. SQUIRES) Metadata is different than a
7 overt visible statement of whatever information it is that
8 you're referring to as metadata, correct?

9 A. Metadata was -- was created for the very point --
10 I mean, there's all -- there's various kinds of metadata.
11 There's metadata such as -- that comes out of the camera,
12 that is created by the camera. It tells you the f-stop,
13 shutter speed, camera that's made, the lense that was made.
14 There's metadata that I input, that I have created when I'm
15 in my postproduction photos, before they're released
16 anywhere -- to stock agencies, to my website, and so on --
17 that, again, identifies me as the owner, gives the full
18 information, my address, my phone number, my -- my website,
19 my email, and then contains information about what the
20 picture is, key words that are linked to it, so it can be
21 found on the web. And -- but at any rate, it -- it -- it
22 was considered a first line of defense; in other words, you
23 know, that it -- you're not supposed to be able to remove
24 metadata that someone puts on there. That is showing who
25 the owner is.

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1 Q. But Pinterest does remove the metadata?

2 A. Well, they have. I don't know how that played out
3 in the decision so far.

4 Q. But forget the decision for the moment.

5 A. Yeah. They did, yes. Uh-huh.

6 Q. So a user could go to Pinterest, find photographic
7 images, and not have any idea who the photographer --

8 A. Well, I mean, this is something that you keep
9 referring to, and this is where we have a very different
10 outlook on the thing. You're saying that, you know, "Oh,
11 you need to put" --

12 Q. I'm just asking questions.

13 A. Well, I know, but you're -- you're saying you need
14 some overt way of showing that you're the owner. I'm saying
15 that, you know, if -- if people followed the rules and the
16 laws, then you're not supposed to be able to strip the
17 metadata off.

18 Q. Okay. So we'll go back to my question. A user
19 who found an image on Pinterest from which metadata had been
20 stripped would have no way of knowing who the photographer
21 or copyright proprietor --

22 A. Well, again, no. If you go --

23 Q. Is that -- is my statement true or not?

24 MR. DeSOUZA: Object to form.

25 A. But again, I will -- I will say, in response to

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1 that, that there are many photos of mine that contain my
2 name on there, and do -- do people -- do -- do people use
3 that to contact me? No. They consider it a free source of
4 photography.

5 Q. (BY MR. SQUIRES) Well, then -- then let me
6 rephrase my question. A user who accesses photographs on
7 Pinterest that do not identify the owner, the photographer,
8 the copyright proprietor, which information had been
9 stripped from the photograph, would have no way of knowing,
10 at that time, who the photographer or copyright proprietor
11 was; is that correct?

12 A. Yes. But I would clarify that -- and you --
13 you -- you put that statement onto the end of it, "at that
14 time," because -- again, as the copyright owner, I do not
15 say, "Oh, they don't know who my picture [sic] is" -- they
16 have -- it's incumbent upon anyone who wants to use my
17 picture to find out who I am, you know, and -- you know,
18 it's not -- they're not excused by saying, "Oh, gee. I
19 don't know who the photographer is."

20 Q. Okay. Did you ever issue a takedown notice to
21 Pinterest with respect to your copyright claims?

22 A. No. I don't believe so, because I never dealt
23 with Pinterest before this lawsuit came up. I think that
24 Mr. Davis did extensively, and he -- his primary goal,

25 ~~originally, was to get them to just -- to take his pictures~~

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1 down, and that was a big problem with Pinterest, was that
2 people would ask and they didn't comply.

3 Q. Okay. I'm through for the day. It's 5:25.
4 Somebody has obligations. And I will not go the full day
5 tomorrow. I'm guessing I will go about a half a day
6 tomorrow. And I hope you enjoy your evening in Albuquerque.

7 THE VIDEOGRAPHER: Shall we go off the record?

8 Q. (BY MR. SQUIRES) You're -- you're here just in
9 time to hang around for a few days and attend the
10 Balloon Fiesta.

11 A. Yeah. I saw them flying this morning.

12 Q. And --

13 A. Interesting timing.

14 Q. So take advantage of the opportunity.

15 THE VIDEOGRAPHER: We're now going off the record.
16 The time is approximately 5:24 p.m. Watch your microphones
17 when you stand up, please.

18 (The proceeding concluded at 5:24 p.m.)
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DEPONENT SIGNATURE/CORRECTION PAGE

If there are any typographical errors to your deposition, indicate them below:

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Any other changes to your deposition are to be listed below with a statement as to the reason for such change.

PAGE	LINE	CORRECTION	REASON FOR CHANGE
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I, BLAINE HARRINGTON, III, do hereby certify that I have read the foregoing pages of my testimony as transcribed and that the same is a true and correct transcript of the testimony given by me in this deposition on September 28, 2022, except for the changes made.

Date signed

BLAINE HARRINGTON, III

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ADLER MEDICAL, LLC; WALT ARNOLD
COMMERCIAL BROKERAGE, INC.; XUAN
NATION, LLC; AND NM CCIM CHAPTER
OF THE COMMERCIAL INVESTMENT REAL
ESTATE INSTITUTE,

Plaintiffs,

vs.

Case No. 1-22-cv-00072-KG-LF

BLAINE HARRINGTON, III,

Defendant/Counterclaim Plaintiff
Third-Party Plaintiff,

vs.

ADLER MEDICAL, LLC; WALT ARNOLD
COMMERCIAL BROKERAGE, INC.; XUAN
NATION, LLC; AND NM CCIM CHAPTER
OF THE COMMERCIAL INVESTMENT REAL
ESTATE INSTITUTE,

Counterclaim Defendants,

and

CCIM INSTITUTE,

Third-Party Defendant.

REPORTER'S CERTIFICATE

I, VERONICA E. BYRD, CCR, RPR, DO HEREBY CERTIFY that
on September 28, 2022, the Deposition of BLAINE HARRINGTON,
III was taken before me at the request of, and sealed
original thereof retained by:

ADLER MEDICAL, LLC vs. HARRINGTON
1-22-cv-00072-KG-LF

Blaine Harrington, III
September 28, 2022

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I FURTHER CERTIFY that copies of this Certificate have been mailed or delivered to all Counsel, and parties to the proceedings not represented by counsel, appearing at the taking of the deposition.

I FURTHER CERTIFY that examination of this transcript and signature of the witness was REQUESTED by the witness and all parties present. On _____, a letter was mailed or delivered to DANIEL DeSOUZA, ESQ., regarding obtaining signature of the witness, and any corrections, if any, were appended to the original and each copy of the Deposition.

I FURTHER CERTIFY that the recoverable cost of the original and one copy of the Deposition, including exhibits, to JEFFREY LOUIS SQUIRES, ESQ., is \$_____.

I FURTHER CERTIFY that I did administer the oath to the witness herein prior to the taking of this Deposition; that I did thereafter report in stenographic shorthand the questions and answers set forth herein, and the foregoing is a true and correct transcript of the proceeding had upon the taking of this Deposition to the best of my ability.

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1 I FURTHER CERTIFY that I am neither employed by nor
2 related to nor contracted with (unless excepted by the
3 rules) any of the parties or attorneys in this case, and
4 that I have no interest whatsoever in the final disposition
5 of this case in any court.

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8
9 VERONICA E. BYRD, CCR, RPR
10 New Mexico CCR #36
License Expires: 12/31/22
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